

(29,124)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922.

No. 574.

LION BONDING & SURETY COMPANY, PETITIONER,

vs.

A. H. KARATZ.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE EIGHTH CIRCUIT.

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a Pleas and proceedings in the United States Circuit Court of Appeals for the Eighth Circuit, at the May Term, 1922, of said Court, before the Honorable John E. Carland, Circuit Judge, and the Honorable Jacob Trieber and the Honorable Thomas C. Munger, District Judges.

Attest:

[Seal United States Circuit Court of Appeals, Eighth Circuit.]

E. E. KOCH,
*Clerk of the United States Circuit Court of
Appeals for the Eighth Circuit.*

Be it Remembered that heretofore, to-wit: on the thirtieth day of December, A. D. 1921, a transcript of record pursuant to an appeal allowed by the District Court of the United States for the District of Minnesota, was filed in the office of the Clerk of the United States Circuit Court of Appeals for the Eighth Circuit, in a certain cause wherein the Lion Bonding & Surety Company, a corporation, was Appellant and A. H. Karatz was Appellee, which said transcript as prepared and printed under the rules of the United States Circuit Court of Appeals for the Eighth Circuit, under the supervision of its Clerk, is in the words and figures following, to-wit:

b (Decree, August 11, 1921.)

In the United States District Court, District of Minnesota, Fourth Division.

A. H. KARATZ, Complainant,

VS.

LION BONDING AND SURETY COMPANY, a Corporation, Defendant.

This cause came on to be heard at this term and was argued by counsel; and thereupon upon consideration thereof it was Ordered, Adjudged and Decreed, as follows, viz:

I.

That A. H. Karatz, the complainant herein, at the time of the filing of the bill of complaint, was a resident and citizen of the State and District of Minnesota, and resided in the City of Minneapolis in the Fourth Division thereof.

II.

That the defendant, Lion Bonding and Surety Company, at the time of the filing of the bill of complaint, was an insurance company organized under the laws of the State of Nebraska, and had been

admitted to do business in the State of Minnesota, and in pursuance of such authority had written and had outstanding in the State of Minnesota a large amount of liability insurance, and had outstanding therein policies of theft insurance, and obligations upon bonds which it had signed as surety for the performance of construction contracts, fidelity bonds and other obligations in an amount exceeding One Hundred Thousand Dollars (\$100,000.00), and had numerous agents within this district and within the State of Minnesota for the conduct of its business.

III.

That during the year 1920, for value received and for a valuable consideration, defendant issued and delivered a certain policy of insurance to the Cleveland Wrecking and Contracting Company, a corporation organized and doing business in the State of Minnesota and in the City of Minneapolis in said State, by the terms of which defendant insured a certain automobile against theft in excess of the sum of Twenty One Hundred Dollars (\$2100.00), which said automobile was subsequently stolen, and the defendant, being duly notified thereof, placed the adjustment of the claim for loss of said automobile in the hands of their business agency, Messrs. Peilen and Peilen in the City of Saint Paul, Minnesota, and an adjustment was had, and it was found that the Cleveland Wrecking and Contracting Company was entitled to receive from defendant on account of the loss of said automobile the sum of Twenty One Hundred Dollars (\$2100.00), and thereupon said Peilen and Peilen drew their draft in payment of the loss so sustained directed to the defendant at its principal place of business in the city of Omaha, State of Nebraska, which draft is as follows:

"Draft No. 2075.

St. Paul, Apl. 9th, 1921.

Pay to the Order of Cleveland Wrecking Co. \$2,100.00 Twenty One Hundred no/100 Dollars Value received in payment of loss Fidelity, Burglary, Collision, Surety, Liability, Fire, Plate Glass, Property, Theft X, Damage, Accident, Health. Indicate kind by X mark.

Claim No. —, Policy No. 13348.

Principal Assured, Cleveland Wrecking Co.

To Lion Bonding & Surety Co., Omaha, Nebraska.

PEILEN & PEILEN.

No Protest.

Not good unless release and receipt on reverse side hereof is signed.

No. protest. 17-99.

Payable through Omaha National Bank, Endorsed by Cleveland Wrecking & Contracting Co., by C. H. Rose, Claimant.

Endorsed by A. H. Karatz.

IV.

That for value received said Cleveland Wrecking and Contracting Company endorsed and transferred this draft to the complainant

herein, and thereupon said complainant caused said draft to be forwarded through the Federal Reserve Bank to a bank in the City of Omaha, Nebraska, for presentation and collection, and said draft was thereafter duly presented for payment, and payment thereon was declined by defendant for the reason that defendant did not have sufficient funds to pay the same, and said draft was thereupon returned to the complainant herein without payment, and has not been paid, although payment thereof was duly demanded; that plaintiff was and is the owner and holder of said draft, and his claim against the defendant herein is hereby adjudicated to be the sum of Twenty One Hundred Dollars (\$2,100.00), with interest from the 9th day of April, 1921, at the rate of six per cent per annum, and said claim so adjudicated and hereby established is hereby directed to be paid out of the assets of the defendant coming into the hands of the receivers hereinafter named in due course of administration.

V.

That defendant had its principal office or place of business in the city of Omaha, and at the time of the filing of the complaint herein was the owner and was possessed of personal property and other property within the District of Minnesota of the value of at least Twenty Thousand Dollars (\$20,000.00).

VI.

That said defendant then had past due liabilities which it was unable to pay and said defendant was insolvent, and had been denied the right to do business in the State of Minnesota by the insurance department of said State.

VII.

That the amount in controversy and in dispute herein, exclusive of interest and costs, exceeds the sum and value of Three Thousand Dollars (\$3,000.00).

VIII.

That the defendant herein at all times and dates herein mentioned has been and now is a citizen of the State of Nebraska.

IX.

That the appointment heretofore and on May 2nd, 1921, made of A. J. Hertz and John I. Levin, as receivers of defendant is hereby made permanent, and their powers continued as in the order of appointment prescribed.

X.

That defendant, its officers, directors, managers, superintendents, agents and employees, and other persons whomsoever are hereby per-

e petually enjoined and restrained from interfering in any manner whatsoever with the possession and control of said receivers over any part of said property.

Dated August 11th, 1921.

WILBUR F. BOOTH,
District Judge.

(Endorsed:) Decree pro confesso. Filed in U. S. District Court on Aug. 11, 1921.)

Petition for Appeal.

To Honorable Wilbur F. Booth, United States District Judge:

The Lion Bonding & Surety Company, defendant, feeling aggrieved by the order and judgment entered in the above entitled case on the 11th day of August, 1921, in favor of complainant and against defendant, adjudging the sum of Twenty-one Hundred (\$2,100.00) Dollars and interest to be due complainant and decreeing its payment out of the assets coming into the hands of the receivers, decreeing the administration of the defendant by the receivers appointed herein and perpetually enjoining the defendant and all of its agencies and other persons whomsoever from interfering with the possession and control of said receivers over any part of the property of the defendant does hereby appeal from said order to the United States Circuit Court of Appeals for the Eighth Circuit for the reasons set forth in the assignment of errors filed herewith and prays that its appeal be allowed and that a citation be issued as provided by law and that a transcript of the record, proceedings and documents upon which said order was based duly authenticated, be sent to said United States Circuit Court of Appeals for the Eighth Circuit under the rules of said court in such cases made and provided.

And your petitioner further prays that the proper order relating to the security to be required of it for costs and damages be made.

HALLECK F. ROSE,
*Solicitor and Counsel for Lion Bonding &
Surety Company, Petitioner.*

Endorsed: Filed in the District Court on Oct. 31, 1921.

Assignment of Errors.

f Comes now the Lion Bonding & Surety Company, appellant, and files the following assignment of errors, upon which it will rely upon its prosecution of the appeal in the above entitled case from the final order, judgment and decree of this honorable court made and entered herein on the 11th day of August, A. D. 1921, adjudging the sum of \$2,100.00 and interest to be due plaintiff, and decreeing its payment out of assets coming into the hands of the receivers, decreeing the administration of the defendant by the receivers appointed herein, and perpetually enjoining the defend-

ant and all of its agencies and other persons whomsoever from interfering with the possession and control of said receivers over any part of the property of defendant.

I.

The court erred in making and entering the order of May 30th, 1921, denying the motion of defendant to dismiss the bill of complaint of complainant.

II.

The court erred in making and entering the order of May 30th, 1921, denying the motion of defendant to vacate the order made and filed on May 2d, 1921, appointing A. J. Hertz and John I. Levin as receivers of all of the property and assets of defendant, and to discharge said receivers.

III.

The court erred in adjudicating that the sum of \$2,100.00 is due plaintiff from defendant and in decreeing that the same be paid out of the assets of defendant coming into the hands of the receivers appointed by said court, in the due course of administration.

IV.

The court erred in decreeing to be permanent the appointment of A. J. Hertz and John I. Levin as receivers of defendant, and in continuing their powers as prescribed in the order appointing them.

V.

The court erred in perpetually enjoining and restraining the defendant, its several agencies, and all other persons whomsoever, from interfering in any manner whatsoever with the possession and control of its said receivers over any part of defendant's property.

VI.

The court erred in that its said order denying appellant's motion to discharge the receivers, and its decree adjudicating complainant's claim and decreeing its payment out of moneys coming to the hands of said receivers in due course of administration, making permanent the appointment of said receivers and continuing their powers, and perpetually enjoining defendant and its agencies and all other persons from interfering with their possession and control of any part of appellant's property, and all and each one of said several orders and proceedings operate to disregard and deny full faith and credit to the public acts and judicial proceedings of the State of Nebraska in violation of Section 1 of Article 4 of the Constitution of the United States, which provides that "Full faith

and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state," in the particulars following: By the provisions of the Civil Administrative Code of Nebraska, and of Article 3, Section 4 thereof, Laws of Nebraska, 1919, Pages 576 to 581, both inclusive, and the judicial proceedings had pursuant thereto in the District Court of Douglas County, Nebraska, in the suit entitled "The Department of Trade and Commerce of the State of Nebraska, plaintiff, vs. The Lion Bonding & Surety Company, a corporation, defendant," the said Department of Trade and Commerce, on April 12, 1921, became vested with possession of all the property, records and effects of said bonding and surety company, and with full and exclusive authority to conduct its business; and said corporation was forbidden by injunction from the transaction of its business or disposition of its property, records and effects, in proceedings which contemplated ultimate liquidation, and the vesting in said Department of Trade and Commerce of title to all the property, effects contracts and rights of action of such company. So that by said public acts and judicial proceedings the said Department of Trade and Commerce became and was the statutory successor of said corporation and all of its powers, rights and effects, with power and standing as such statutory successor, owner and proprietor to assert, hold and maintain the same in all of the states and federal judicial districts, the source of its powers and title in respect to said corporate property and business being the said public act or acts, and its said title and powers not being derived from nor limited to such as flow from the mere appointment of an agency of the said court. The said proceedings of this honorable court, had without notice to or service upon said Department of Trade and Commerce, were therefore void for want of a necessary party, were a usurpation of the powers and functions devolving upon said department and agency of the State of Nebraska by said public act or acts, over the affairs and property of a domestic corporation of said state, and were an interference with and invasion of the exclusive jurisdiction of said District Court of Douglas County, Nebraska, which had previously vested, over the affairs and property of said domestic corporation, all of which were and are entitled to full faith and credit in the state and district of Minnesota, as is provided in and by the aforesaid provision of the Constitution of the United States.

VII.

The court was and is without jurisdiction of the subject matter of the bill of complaint, or to appoint receivers, or administer and wind up the affairs and distribute the assets of the appellant, the particular facts which exclude such jurisdiction appearing on the face of the bill, and by the evidence adduced in support of defendant's motion to discharge the receivers, as follows: (1) The sum or amount in dispute was and is limited to two thousand one hundred dollars (\$2,100.00) and does not exceed, exclusive of interest and costs, the sum of three thousand dollars (\$3,000.00); (2) the plaintiff sues as a simple contract creditor on a claim not reduced to judg-

ment without having previously exhausted or invoked his remedy at law, and without having or claiming any specific legal or equitable interest in or title to the property of defendant or any part thereof, and without alleging any jurisdictional ground for invoking the powers of equity; (3) defendant is an insurance company organized under and pursuant to the laws of Nebraska, and the courts of said state or the federal courts of the domiciliary judicial district have exclusive authority to entertain primary proceedings for a general receivership of said corporation, the closing and winding up of its affairs, the distribution of its assets or its dissolution, the suit for that purpose being local in its nature and not cognizable by the District Court of the United States for the District of Minnesota; and (4) prior jurisdiction over the subject matter of the administration, liquidation and dissolution of said defendant corporation, had vested in and was being exercised by the District Court of Douglas County, Nebraska, in judicial proceedings had pursuant to the public acts of the said state, whereby the said corporation had been enjoined from transaction of its business or disposition of its property, records and effects, and possession had been decreed and taken by the Department of Trade and Commerce of the State of Nebraska of the property, records and effects of said corporation, with full and exclusive power to conduct its business, all in contemplation of the ultimate liquidation and dissolution of said corporation in the same proceedings. The jurisdiction so exercised by said court was and is exclusive and operated to withdraw the property, records and effects of said corporation from the control and jurisdiction of all other courts, including the United States District Court for the District of Minnesota.

Wherefore, appellant prays that each and every of the several orders aforesaid be reversed and that such directions be given to the said District Court of the United States for the District of Minnesota, Fourth Division, in that behalf, as may be agreeable to equity and for such relief as on the record appellant ought to have, including dismissal of appellee's bill of complaint for want of equity, and for want of jurisdiction.

HALLECK F. ROSE,
Solicitor and Counsel for Appellant,
Lion Bonding & Surety Company.

Endorsed: Filed in the District Court on Oct. 31, 1921.

Order Allowing Appeal.

Upon the petition for appeal and assignment of errors herein by the Lion Bonding & Surety Company and on the motion of Halleck F. Rose, Solicitor and Counsel for said petitioner, it is hereby ordered that an appeal to the United States Circuit Court of Appeals for the Eighth Circuit from the order of this court entered in the above entitled cause on the 11th day of August, A. D. 1921, adjudging the sum of Twenty-one Hundred (\$2,100.00) Dollars and interest to

be due plaintiff and decreeing its payment out of assets coming into the hands of the receivers, decreeing the administration of the defendant by the receivers appointed herein and perpetually enjoining the defendant and all of its agencies and other persons whomsoever from interfering with the possession and control of said receivers over any part of the property of defendant be and the same is hereby allowed and that a certified transcript of the proceedings, evidence, and documents on which said orders were based be forthwith transmitted to said Circuit Court of Appeals for the Eighth Circuit.

It is further ordered that the bond on appeal be and it is hereby fixed at the sum of Five Hundred (\$500.00) Dollars, the same to act as a bond for costs and damages.

j Dated this 31st day of October, 1921.

By the Court,

WILBUR F. BOOTH,
United States District Judge.

Endorsed: Filed in the District Court on Oct. 31, 1921.

Bond on Appeal.

Know All Men by These Presents: That we, Lion Bonding & Surety Company (principal) and American Surety Company of New York (surety) are held and firmly bound unto A. H. Karatz in the full and just sum of Five Hundred (\$500.00) Dollars to be paid to A. H. Karatz, complainant, and all creditors of Lion Bonding & Surety Company who elect to become complainants with him, their successors, heir executors, administrators or assigns, to which payment well and truly to be made we bind ourselves, our successors, heirs, executors and administrators jointly and severally by these presents.

Sealed with our seals and dated this 24th day of October, 1921.

Whereas, lately at the — term, A. D. 1921, to-wit: on the 11th day of August, 1921, the District Court of the United States for the District of Minnesota, Fourth Division, in a suit pending in said court between A. H. Karatz, plaintiff, and Lion Bonding & Surety Company, defendant, a final judgment, order and decree was rendered against the said Lion Bonding & Surety Company adjudging the sum of Twenty-one Hundred (\$2,100.00) Dollars and interest to be due plaintiff and decreeing its payment out of assets coming into the hands of the receivers and decreeing the administration of the defendant by the receivers appointed therein and perpetually enjoining the defendant and all of its agencies and other persons whomsoever from interfering with the possession and control of said receivers over any part of the property of said defendant and the said Lion Bonding & Surety Company has obtained an appeal of the said court to reverse the order in the aforesaid suit and a citation directed to said A. H. Karatz citing and admonishing him to be and appear in the United States Circuit Court of Appeals for the Eighth Circuit at the City of St. Louis, Missouri, sixty days from and after the date of said citation:

Now the condition of the above obligation is such that if the said Lion Bonding & Surety Company shall prosecute said appeal to effect and answer all damages and costs if it fails to make good its plea then the obligation to be void else to remain in full force and virtue.

LION BONDING & SURETY COMPANY,

By HALLECK F. ROSE,
Its Solicitor and Counsel of Record, [SEAL.]
 and By AMOS THOMAS,
*Special Agent of Department of Trade
 and Commerce of State of Nebraska*. [SEAL.]

AMERICAN SURETY COMPANY
 OF NEW YORK,

By J. G. LEWIS,
 (J. G. LEWIS),
Resident Vice President.

Sealed and delivered in presence of:

G. M. KLABO,
 (G. M. KLABO).

Attest:

Resident Assistant Secretary at Minneapolis, Minn.

Approved by
 WILBUR F. BOOTH,
Judge.

Endorsed: Filed in the District Court on Oct. 31, 1921.

(Citation and Acknowledgment of Service.)

The United States of America to A. H. Karatz, Greeting:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the Eighth Circuit at the City of St. Louis, Missouri, sixty days from and after the date this citation bears date pursuant to an appeal filed in the Clerk's office of the District Court of the United States for the District of Minnesota, Fourth Division, wherein Lion Bonding & Surety Company, a corporation, is appellant, and you are appellee, to show cause, if any there be, why the judgment rendered against said appellant as in said appeal mentioned, should not be corrected and why speedy justice should not be done the parties in that behalf.

Witness, the Honorable the Judges of the District Court of the United States for the District of Minnesota, this 31st day of October, 1921.

WILBUR F. BOOTH,
United States District Judge, District of Minnesota.

Service of the above citation acknowledged this 31st day of October, 1921.

SANBORN, GRAVES & ORDWAY,
Solicitors for Appellee.

Endorsed: Filed in the District Court on Nov. 15, 1921.

Præcipe for Transcript on Appeal.

To the Clerk of the District Court of the United States for the District of Minnesota, Fourth Division:

You will please include in the record and transcript on appeal in said case for the United States Circuit Court of Appeals, Eighth Circuit, in the appeal taken by defendant, Lion Bonding & Surety Company, from the final judgment, order and decree entered August 11th, A. D. 1921, the following papers and proceedings:

1. The decree entered August 11, 1921, bearing endorsement "Decree pro confesso."
2. Petition for allowance of appeal from said decree.
3. Assignment of errors in said proceedings and decree.
4. Order allowing appeal from said decree.
5. Appeal bond on appeal from said decree.
6. Original citation on appeal from said decree and acceptance of service thereof.
7. Præcipe for transcript on appeal from said decree.
8. Clerk's certificate.

And notice is hereby given to complainant on whom this præcipe is served, that the record on the appeal heretofore separately taken and prosecuted by this appellant from the interlocutory order appointing receivers, entered May 2, 1921, now on file in the said Circuit Court of Appeals and printed, will also be used on the present appeal from said final decree entered August 11, 1921, as is provided by the acts of Congress and the rules of practice of said court in that behalf.

HALLECK F. ROSE,
Solicitor and Counsel for Defendant, Appellant.

Service of the above and foregoing præcipe is acknowledged this 7 day of November, 1921, no præcipe for any additional parts of the record will be filed by the complainant.

Solicitor and Counsel for Complainant, Appellee.

(Affidavit of Service.)

STATE OF NEBRASKA,
Douglas County, ss:

Halleck F. Rose, being first duly sworn on his oath says: Prior to October 31, 1921, and concurrently with my transmittal to the Clerk of this court of the petition for appeal and assignment of errors for presentation and allowance by the court in A. H. Karatz, Complainant, vs. Lion Bonding & Surety Company, defendant, I transmitted to Mr. Bruce Sanborn, attorney for complainant, by mail addressed to his offices in the Endicott Building, St. Paul, Minnesota, a duplicate of the annexed præcipe for transcript. I subsequently received from him a letter in and by which he acknowledged the receipt of said præcipe, reserving the decision of the question of whether he should waive the right to file a præcipe for any additional parts of the record until after allowance of the appeal. Said Bruce Sanborn counsel as aforesaid, has since then acknowledged service of the citation issued on said appeal and he has retained the said duplicate of the annexed præcipe since on and prior to October 31, 1921.

HALLECK F. ROSE.

Subscribed and sworn to before me this 7 day of November 1921.

[Notarial Seal.]

PAUL L. MARTIN,
Notary Public.

Endorsed: Filed in the District Court on Nov. 15, 1921.

(Clerk's Certificate to Transcript.)

UNITED STATES OF AMERICA:

District Court of the United States, District of Minnesota, Fourth Division.

I, Joel M. Dickey, Clerk of said District Court, do hereby certify and return to the Honorable, the United States Circuit Court of Appeals for the Eighth Circuit, that the foregoing, consisting of 14 pages, numbered consecutively from 1 to 14, inclusive, is a true and complete transcript of the records, process, pleadings, orders, final decree, and all other proceedings in said cause wherein A. H. Karatz is complainant and Lion Bonding & Surety Company, a corporation, is defendant, and of the whole thereof (except as modified by the præcipe of the defendant herein to be found at page 13 of said transcript) as appears from the original records and files of said Court; and I do further certify and return that I have annexed to said transcript and included within said paging the original Citation together with proof of service thereof.

In witness whereof, I have hereunto set my hand, and affixed the seal of said Court, at Minneapolis, in the District of Minnesota, this 23rd day of December, A. D. 1921.

[Seal U. S. District Court, Dist. of Minnesota, Fourth Division.]

JOEL M. DICKEY,

Clerk,

By THOMAS H. HOWARD,

Deputy.

Filed Dec. 30, 1921.

E. E. KOCH, *Clerk.*

o And thereafter the following proceedings were had in said cause in the Circuit Court of Appeals, viz:

(Appearance of Counsel for Appellant.)

United States Circuit Court of Appeals, Eighth Circuit.

No. 6007.

LION BONDING & SURETY COMPANY, Appellant,

vs.

A. H. KARATZ.

The Clerk will enter my appearance as Counsel for the Appellant.
 AMOS THOMAS.
 HALLECK F. ROSE.
 JOHN F. STOUT.
 ARTHUR R. WELLS.
 PAUL L. MARTIN.

(Endorsed:) Filed in U. S. Circuit Court of Appeals, Dec. 30, 1921.

(Appearance of Counsel for Appellee.)

The Clerk will enter my appearance as Counsel for the Appellee.
 BRUCE W. SANBORN.
 WILLIAM G. GRAVES.
 SAMUEL G. ORDWAY.
 WILLIAM R. KUEFFNER.

(Endorsed:) Filed in U. S. Circuit Court of Appeals, Jan. 18, 1922.

p *(Motion to Advance and for Hearing on Record and Briefs in Cause No. 5902, Between the Same Parties.)*

Appellant herein, Lion Bonding & Surety Company, respectfully moves the court to advance this case for hearing, with the prior ap-

peal in the same case, by the same appellant, bearing the same title, No. 5902, on the calendar of cases for hearing at St. Louis, January 11, 1922, and to hear the same on the record herein, and on the record and briefs in said case No. 5902.

As cause for this motion, appellant submits the following facts appearing on the face of the records:

1. In said case No. 5902 the appeal is from an interlocutory decree appointing a receiver of appellant, and that record, upon the præcipe of the appellee, embraces a record of several motions of appellant to discharge the receivers, and to dismiss the bill, and all of the proceedings had therein, prior to date of final decree which had not been entered when the appeal was taken.

2. Appellant stood on its said motions, and thereafter a final decree was entered in the lower court in favor of plaintiff therein, from which appellant prosecuted the present appeal, case No. 6007. The separate record on this appeal comprises only the final decree and the proceedings for appeal, including a notice in appellants præcipe for the record, that appellant will use the record on the appeal in case No. 5902, already on file in this court, as so much of the record on this appeal. Appellant submits that unless it is permitted so to do it will, because of appellee's præcipe that the whole of said proceedings, prior to final decree, be included in the record of the first appeal, be obliged, oppressively, to duplicate the cost of making and printing a voluminous record.

3. The questions arising on said two appeals, though differing because of the limitation of appellate powers on the appeal from an interlocutory order appointing receivers, are in the main identical, and are so closely related that justice will be furthered by hearing both appeals at one time.

4. Upon stipulation of counsel, case No. 5950, A. J. Hertz and John I. Levin as receivers of Lion Bonding & Surety Company v. Lion Bonding & Surety Company and others, an appeal from the United States District Court, District of Nebraska, is on the calendar of cases in this court for hearing January 11, 1922, with said case No. 5902, and counsel has filed a single brief in said cases Nos. 5902 and 5950, in one of which he appears for appellant, and in the other for appellee, the questions raised in said 5950, being practically the same as in the other two appeals herein mentioned. The brief of Lion Bonding & Surety Company and the Department of Trade & Commerce of the State of Nebraska, carried the title of all three cases, and presents the questions raised in all of them in a single argument.

5. All three of said appeals present only questions of jurisdiction of the United States District Court for the District of Minnesota, and of priority of jurisdiction and conflict of judicial authority between said federal courts and the District Court of Douglas County, State of Nebraska, concerning the subject matter of the liquidation of an insurance company organized under the laws of Nebraska,

the speedy determination of every phase of which, by this court, is a matter of great public interest and concern.

6. Appellant's argument by brief in the present case was presented seasonably to adverse counsel, and has been replied to by brief, and the consolidation of said causes for hearing will serve the ends of justice and expedite the business of the court by relieving it and the parties from the burden of unnecessary separate hearings.

r
HALLECK F. ROSE,
AMOS THOMAS,

Counsel for Appellant, Lion Bonding & Surety Company.

(Endorsed:) Filed in U. S. Circuit Court of Appeals, Jan. 6, 1922.

(Order Granting Leave to Use Record and Briefs in Cause No. 5902.)

May Term, 1922.

Monday, May 22, 1922.

Upon motion of Halleck F. Rose, counsel for appellant, Mr. Bruce W. Sanborn, counsel for appellee, consenting thereto, It is ordered by this Court that printed copies of the transcript of record and briefs in cause No. 5902, between the same parties, may be used upon the hearing and submission of the present appeal with the same effect as if filed herein.

May 22, 1922.

(Memorandum of Clerk.)

The transcript of record mentioned in the above order is included under another cover and for purposes of identification marked volume 2 and numbered and entitled in this cause, No. 6007.

(Order of Submission.)

May Term, 1922.

Monday, May 22, 1922.

This cause came on this day for hearing, and by agreement of counsel in open Court, Mr. Halleck F. Rose representing appellant, and Mr. Bruce W. Sanborn representing appellee, the same was submitted to the Court on the transcript of the record from said District Court, and the transcript of the record and briefs for both parties filed in cause No. 5902, Lion Bonding and Surety Company v. Karatz, pursuant to the order of the Court this day entered herein.

(*Opinion.*)

United States Circuit Court of Appeals, Eighth Circuit, May Term,
A. D. 1922.

No. 6007.

LION BONDING & SURETY COMPANY, Appellant,

v.

A. H. KARATZ, Appellee.

Appeal from the District Court of the United States for the District
of Minnesota.

Mr. Halleck F. Rose, Mr. Amos Thomas, Mr. George W. Pratt and
Mr. Clarence A. Davis, Attorney General of Nebraska, submitted brief
for appellant.

Mr. Bruce W. Sanborn, Mr. William G. Graves and Mr. Samuel
G. Ordway submitted brief for appellee.

Before Carland, Circuit Judge, and Trieber and Munger, District
Judges.

Per Curiam:

This is an appeal from the final decree, involving the same ques-
tions determined by us in this cause at the December term, 1921, No.
5902, the opinion filed April 28, 1922, on which an appeal had been
taken, under Sect. 129 of the Judicial Code, from an interlocutory
order appointing a receiver of the assets of appellant. The decree in
this cause was rendered and submitted to this court on the same
record, as in No. 5902.

For the reasons stated in the opinion in No. 5902 the decree is
Affirmed.

Filed June 30, 1922.

u

(Decree.)

United States Circuit Court of Appeals, Eighth Circuit, May Term,
1922.

Friday, July 7, 1922.

No. 6007.

LION BONDING AND SURETY COMPANY, a Corporation, Appellant,

vs.

A. H. KARATZ.

Appeal from the District Court of the United States for the District
of Minnesota.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the District of Minnesota, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged and decreed by this Court, that the decree of the said District Court, in this cause, be, and the same is hereby, affirmed with costs; and that A. H. Karatz have and recover against the Lion Bonding and Surety Company, a corporation, the sum of twenty dollars for his costs herein and have execution therefor.

July 7, 1922.

v (*Præcipe for Transcript for Use on Application for Writ of
Certiorari to the Supreme Court U. S.*)

To the Clerk of said Court:

Please make and deliver to us, prepared in form suitable for presentation with a petition for a writ of certiorari to the Supreme Court of the United States:

1. A certified copy of the transcript of the record, including all proceedings in the United States Circuit Court of Appeals for the Eighth Circuit.

2. And including the transcript of the record in case No. 5902, Lion Bonding & Surety Company vs. Karatz, which was part of the record on appeal in said case No. 6007, and also opinion in No. 5902.

3. And including and accompanying the same ten uncertified copies of the record as above specified.

HALLECK F. ROSE,
Counsel for Appellant.

(Endorsed:) Filed in U. S. Circuit Court of Appeals, Aug. 11,
1922.

United States Circuit Court of Appeals, Eighth Circuit.

I, E. E. Koch, Clerk of the United States Circuit Court of Appeals for the Eighth Circuit, do hereby certify that the foregoing contains the transcript of the record from the District Court of the United States for the District of Minnesota as prepared and printed under the rules of the United States Circuit Court of Appeals for the Eighth Circuit, under the supervision of its Clerk, and full, true and complete copies of the pleadings, record entries and proceedings, including the opinion, had and filed in the United States Circuit Court of Appeals, except the full captions, titles and endorsements omitted in pursuance of the rules of the Supreme Court of the United States, prepared in accordance with the præcipe of counsel for appellant, in a certain cause in said Circuit Court of Appeals wherein the Lion Bonding & Surety Company, a corporation, was Appellant and A. H. Karatz was Appellee, No. 6007, as full, true and complete as the originals of the same remain on file and of record in my office.

I do further certify that a full, true and complete transcript of the record in case No. 5902, Lion Bonding and Surety Company v. Karatz, and of the opinion of said United States Circuit Court of Appeals in said cause, called for in the præcipe filed by counsel for appellant in case No. 6007, is included under separate cover, marked Volume 2.

In testimony whereof, I hereunto subscribe my name and affix the seal of the United States Circuit Court of Appeals for the Eighth Circuit, at office in the City of St. Louis, Missouri, this seventeenth day of August, A. D. 1922.

[Seal of United States Circuit Court of Appeals, Eighth Circuit.]

E. E. KOCH,
Clerk of the United States Circuit Court of
Appeals for the Eighth Circuit.

1 *Bill of Complaint.*

In the District — of the United States for the District of Minnesota,
Fourth Division.

In Equity.

A. H. KARATZ, Complainant,
vs.

LION BONDING & SURETY COMPANY, a Corporation, Defendant.

To the Honorable Judges of said Court in equity sitting:

Your orator above-named, suing on behalf of himself and also all other parties similarly situated who may desire to become com-

plainants herein, brings this as his bill of complaint against the Lion Bonding & Surety Company, a corporation, the defendant above-named, and thereupon complains and says:

I.

That your orator, A. H. Karatz, is a resident and citizen of the State and District of Minnesota and resides in the city of Minneapolis in the Fourth division thereof.

II.

That the defendant is an insurance corporation organized under the laws of the State of Nebraska and has been admitted to do business in the State of Minnesota, and that in pursuance of such authority, it has written a large amount of liability insurance and has outstanding in the state policies of liability and theft insurance and obligations upon bonds which it has signed as sureties for the performance of construction contracts, fidelity bonds and other obligations in an amount exceeding One Hundred Thousand Dollars (\$100,000), and that it has numerous agents within this District and within the State of Minnesota for the conduct of its business.

III.

2 That during the year of 1920, for value received, and for a valuable consideration, it issued and delivered a certain policy of insurance to the Cleveland Wrecking & Contracting Co., a corporation organized and doing business in the State of Minnesota and doing business in the city of Minneapolis in said State, by the terms of which it insured a certain automobile against theft in excess of the sum of Two Thousand One Hundred Dollars (\$2,100.00), which said automobile was subsequently stolen, and the defendant, being duly notified thereof, placed the adjustment of the claim of said Cleveland Wrecking & Contracting Co. for the loss of said automobile in the hands of their business agency, Messrs. Peilen & Peilen in the city of Saint Paul, Minnesota for adjustment, and that an adjustment was had and it was found that the Cleveland Wrecking & Contracting Co. was entitled to receive from the defendant herein on account of the loss of said automobile, the amount of Two Thousand One Hundred Dollars (\$2,100.00), and thereupon said Peilen & Peilen drew their draft in [in] payment of the loss so sustained directly to the defendant at its principal place of business in the city of Omaha, State of Nebraska, which draft is as follows:

"Draft No. 2075.

St. Paul, April 19th, 1921.

Pay to the Order of Cleveland Wrecking Co. \$2,100, Twenty-one hundred no./100 Dollars, Value received, in payment of loss Fidelity, Burglarly, Collision, Surety, Liability, Fire, Plate Glass, Property, Damage, Theft X, Accident, Health. Indicate kind by X mark.

Claim No. —. Policy No. 13343.

Principal Assured, Cleveland Wrecking Co., Omaha Nebraska.

No Protest.

Not good unless release and receipt on reverse side hereof is signed.

No Protest. 17-99.

PEILEN & PEILEN.

Payable through Omaha National Bank.

Endorsed by Cleveland Wrecking & Contracting Co., by C. H. Rose, Claimant.

Endorsed by A. H. Kartz.

3

IV.

That for value received, the said Cleveland Wrecking & Constructing Co. endorsed and transferred this draft to the complainant herein, and thereupon said complainant caused said draft to be forwarded through the Federal Reserve Bank to a bank in the city of Omaha, Nebraska, for presentation and collection, and that the draft was thereafter duly presented for payment and that payment thereon was declined for the reason that the defendant did not have sufficient funds to pay the same, and that said draft was thereupon returned to the complainant herein without payment and remained wholly unpaid, although payment thereof has been duly demanded.

V.

Your complainant further alleges that, although the defendant has its principal office or place of business in the city of Omaha, Nebraska, from which city all of the financial affairs of said company have been and now are being directed and administered, said defendant is the owner of and is possessed of a large amount of personal property within the District of Minnesota, consisting of premiums due from its policyholders, moneys and credits in the hands of its local agents and in banks, and other property, the exact nature and character of which is to this complainant unknown, and which this complainant alleges to be of the value of at least Twenty Thousand Dollars (\$20,000.00).

VI.

Your complainant further represents and states to the Court that said defendant has past due liabilities amounting to the sum of Three Hundred Seventy-seven Thousand Seven Hundred and Ninety Dollars (\$377,790.00), which said defendant is wholly unable to pay, and that said defendant has been denied the right to continue to do business in the State of Minnesota and Nebraska by the Insurance Commissioners of said states; that it has ceased to be a going concern, and that by reason of the insolvency of said defendant there is great danger of the property being wasted and dissipated through loss of control thereof by the officers of said defendant and

litigation ensuing or about to ensue upon the large amount of unpaid claims.

VII.

Your complainant further shows that he is informed and believes the same to be true, that the cash on hand and accounts and
4 bills receivable of the defendant corporation are insufficient to pay its indebtedness due and past due, and that various creditors are threatening to sue the company and collect their claims by separate executions, attachments and other proceedings, unless the court will take the property of said defendant into its custody and appoint receivers for the purpose of converting the assets of the company into money and distributing the same among the creditors of said defendant.

VIII.

That this action is commenced for the purpose of closing up the business of the said defendant and causing a just and fair distribution of the property of said defendant to be made among its creditors.

IX.

That the defendant herein at all the times and dates herein — -clusive of interest and costs, exceeds the sum and value of Three Thousand Dollars (\$3,000.00).

X.

That the defendant herein at all times and dates herein mentioned has been and now is a citizen of the State of Nebraska.

Wherefore, and inasmuch as your orator is remediless in the premises at and by the strict rules of the common law, and can have relief only in a Court of Equity where matters of this nature are properly cognizable and reviewable, they file this bill on behalf of themselves and all others in like relation to the said property, and pray:

That the amount due the complainant and all other creditors herein from the defendant be adjudicated and determined and that the amount due complainant be adjudged a first lien upon all of the assets of defendant in the State of Minnesota.

That for the purpose of protecting the general public, as well as the creditors and stockholders of said defendant corporation and in order to preserve the property of said defendant and to prevent the further distribution thereof by separate executions, attachments, sequestration and other proceedings, the occurrence of which will be unavoidable, your orator prays that this Court will forthwith appoint one or more receivers of all of the property and assets owned and controlled by the defendant, including the property and assets of

5 every kind and description and wherever situated with the authority to collect and manage the same and to apply the balance ratably to the payment of all the debts and obligations of the said defendant, and that in default of the payment of said obligations, the Court will provide for the sale and disposition of the assets of the defendant as a whole or otherwise as the Court may determine;

That the defendant and its officers, managers, superintendents, agents and employees be forthwith required to deliver up the possession of all and singular each and every part of said property over which said receivers shall be appointed wherever situated; also books of account, office vouchers and papers in any way related to the business of the defendant, and that an injunction issue restraining perpetually and during the pendency of this suit the defendant and its officers, directors, managers, superintendents, agents and employees and all other persons whomsoever from interfering in any way whatever with the possession and control of such receiver or receivers over any part of the said property;

That Your Honor may grant to your orator a writ of subpoena directed to the defendant, Lion Bonding & Surety Company, commanding it at a certain time and under the penalty therein to be named, personally to be and appear before this Honorable Court then and there to answer all and singular the matters aforesaid, but without oath (all answers under oath being hereby expressly waived) according to the practice and rules of this Court, and to stand and abide by and perform such order, direction and decree as shall be made herein and as to Your Honor shall seem equitable and just, and that your orator shall have such other and further relief as to the Court shall seem proper and as may be necessary to enforce the rights and equities of your orator and all other creditors and stockholders of the defendant corporation.

SANBORN, GRAVES & ORDWAY,
Solicitors for Complainant.

St. Paul, Minnesota.

STATE OF MINNESOTA.

County of Ramsey, ss:

A. H. Karatz came before me personally, and being by me duly sworn, did say that he is the complainant in the above entitled suit; that the foregoing bill of complaint has been read by him and that he knows the contents thereof and that the same are true
6 of his own knowledge except as to the matters which are therein stated on information and belief, and as to those matters he believes it to be true.

A. H. KARATZ.

Subscribed and sworn to before me this 29 day of April, 1921.

[Notarial Seal.]

A. J. HERTZ,

Notary Public, Hennepin County, Minnesota.

My commission expires July 9, 1925.

Endorsed: Filed in the District Court on May 2, 1921.

Præcipe for Chancery Subpœna.

To the Clerk of the above-named Court:

Please issue chancery subpœna directed to the above named defendant, and make 2 additional copies thereof for service on the State Insurance Commissioner (See Sec. 3377, Gen. State. Minn.).

SANBORN, GRAVES & ORDWAY,
Solicitors for Complainant.

Endorsed: Filed in the District Court on May 2, 1921.

(Subpœna in Chancery and Marshal's Return.)

UNITED STATES OF AMERICA.

District of Minnesota.

Fourth Division. ss.

The President of the United States of America to Lion Bonding & Surety Company, a corporation, Greeting:

You are hereby commanded to appear before our District Court of the United States of America for the District of Minnesota, Fourth Division, at Minneapolis in said District, within twenty days after the service of this Subpœna upon you, exclusive of the day of such service, to answer the Bill of Complaint of A. H. Karatz this day filed in the Clerk's office of said Court, in said Minneapolis then and there to receive and abide by such judgment and decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default.

7 For the Marshal of the United States for the District of Minnesota to execute.

Witness the Honorable Wilbur F. Booth, Judge of the District Court of the United States of America for the District of Minnesota, and the seal of said Court hereunto affixed. Issued at Minneapolis in said District this 2nd day of May, A. D. 1921.

[SEAL.]

CHARLES L. SPENCER,
Clerk,

By LEMPI M. LAHTINEN,
Deputy Clerk.

Memorandum.

The within-named defendant is notified that it is required to file its answer or other defense in the Clerk's office of said Court, at Minneapolis aforesaid, on or before the 20th day after the service of this subpœna, excluding the day thereof; otherwise the Bill of Complaint may be taken pro confesso.

CHARLES L. SPENCER,
Clerk,

By LEMPI M. LAHTINEN,
Deputy Clerk.

Sanborn, Graves & Ordway,
Plaintiff's Solicitors,
520 Endicott Bldg., St. Paul Minn.

(Endorsed:) Original. Insurance Department. State of Minnesota. Service of the within made and
[Cut of time clock.] accepted and a copy filed in this office and
copy forwarded to company this 5th day of
May, A. D. 1921. G. Lindquist, Insurance Commissioner.

Return on Service of Writ.

UNITED STATES OF AMERICA,
District of Minnesota, ss:

I hereby certify and return that I served the annexed Subpœna on the therein-named Gustaf Lindquist, Insurance Commissioner for the State of Minnesota, by handing to and leaving a true and correct copy thereof with him; and by handing to and leaving with him \$2.00 his legal fee personally at St. Paul, in said District on the 5th day of May, A. D. 1921.

JOSEPH A. WESSEL,
U. S. Marshal,
By C. M. SMITH,
Deputy.

Endorsed: Filed in the District Court on May 9, 1921.

8 (*Order Appointing A. J. Hertz et al. as Receivers of Lion Bonding & Surety Co.*)

Upon reading and considering the petition and motion of the complainant herein and the verified bill of complaint in this cause, and upon due consideration,

It Is Ordered, Adjudged And Decreed by the Court:

1. That A. J. Hertz and John I. Levin be and they are hereby appointed receivers of all the property of every kind and nature, whether real, personal, or mixed, whether at law or in equity, whether in action or in possession, wheresoever situated, of the defendant Lion Bonding & Surety Company.

2. That the said receivers are hereby authorized and directed to take immediate possession of all the property of the defendant herein and to institute and prosecute such suits as may in their judgment be necessary for the proper protection of the property and trust hereby vested in them, and likewise to defend all such actions instituted against them as such receivers, and also to go in and conduct the prosecution and defense of any suits now pending for or against the defendant which at any time may affect the property of which they are appointed receivers;

3. That before entering upon the discharge of their duties as such receivers, and within three days from this date, they shall execute and file in the office of the Clerk of this Court an undertaking or bond to the Clerk with one or more sureties to be approved by this Court, or by the Clerk or Deputy Clerk thereof, for the benefit of all

persons who may be concerned in said property, in the penal sum of \$20,000.00, conditioned to the effect that they will faithfully discharge their duties as receivers herein and obey the orders of this Court.

4. That out of the moneys which shall come into the hands of the receivers, they shall pay the ordinary expenses incident to the trust hereby created, including the premium upon their bond as such receivers, and all taxes and assessments lawfully due or to become due thereon, so far as may be necessary to protect said property from loss or confiscation, and such other sums as may be ordered by the Court.

5. Four months is declared to be a reasonable time, and is hereby fixed as such within which the receivers may elect to renounce or assume any lease of any property to the Lion Bonding & Surety Company, and the receivers may make such election in any case within that time unless otherwise ordered by the Court.

9 6. The complainant herein is authorized to apply to any other United States District Court of competent jurisdiction for such order or orders in the premises as they may deem necessary in aid of the orders issued by this Court. The right is reserved to each and all parties to apply for any further or other instruction to the receivers as they may be advised, and this Court reserves the right to make such orders as it may deem fit and just touching the payment of all legal claims and accounts for labor, supplies, services, salaries and other liabilities, of said Lion Bonding & Surety Company, and to charge such claims, or such proportion thereof, as to the Court may seem proper, upon the property of the Company as prior and preferred claims.

Dated May 2, 1921.

WILBUR F. BOOTH,
United States District Judge.

Endorsed: Filed in the District Court on May 2, 1921.

Bond of Receivers.

Know All Men By These Presents, That Fidelity and Deposit Co. of Maryland, A. J. Hertz and John I. Levin, both of the City of St. Paul, State of Minnesota, are held and firmly bound unto the United States of America, in the sum of Twenty Thousand and No-100 Dollars (\$20,000.00), lawful money of the United States, to be paid unto the said District Court of the United States, its successors or assigns, for which payment, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, firmly by these presents.

Sealed with our seals, and dated this 4th day of May, 1921.

The Condition Of This Obligation Is Such, That whereas the above named A. J. Hertz and John I. Levin were, by the order of the Honorable Wilbur F. Booth, Judge of the United States District

Court for the District of Minnesota, Fourth Division, in the premises, bearing the second day of May, 1921, appointed receivers of all the property and effects of the Lion Bonding & Surety Company, a Corporation.

Now, Therefore, In case the said A. J. Hertz and John I. Levin shall justly and faithfully perform all of their duties as such receivers, in accordance with the law in such case made and provided, and the orders of the Court in the premises, then this obligation shall be void; otherwise of force.

A. J. HERTZ,

JOHN I. LEVIN,

[Corporate Seal.] FIDELITY AND DEPOSIT COMPANY
OF MARYLAND,

By A. H. J. MENSING, *Attorney-in-Fact.*

Signed, sealed and delivered in presence of:

ANNA ANDERSON,

WALTER C. BRANDT,

As to Principal.

E. E. SHIMOTA,

E. P. GEIBER,

As to Surety.

STATE OF MINNESOTA,

County of Ramsey, ss:

On this 4 day of May, A. D. 1921, came before me personally A. J. Hertz and John I. Levin, to me well known to be the same persons who executed the foregoing bond, and each severally acknowledged the same to be his own free act and deed.

[Notarial Seal.]

WALTER C. BRANDT,

Notary Public, Ramsey County, Minnesota.

My commission expires Nov. 26, 1924.

STATE OF MINNESOTA,

County of Ramsey, ss:

On this 4th day of May, A. D. 1921, personally appeared before me A. H. J. Mensing who being duly sworn deposes and says, that he is attorney-in-fact of the Fidelity and Deposit Company of Maryland, that the seal affixed to the foregoing instrument is the Corporate Seal of said Corporation and that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of

Directors and the said A. H. J. Mensing acknowledged that he executed said instrument as such attorney-in-fact and as the free act and deed of said Corporation.

[Notarial Seal.]

E. E. SHIMOTA,

Notary Public, Ramsey County, Minn.

My commission expires March 6, 1928.

Endorsed: Filed in the District Court on May 4, 1921.

Motion to Dismiss the Bill of Complaint.

The defendant moves the court to dismiss the bill of complaint of the plaintiff filed herein because the facts therein stated and set forth are not sufficient to constitute a valid cause of action in equity and in this behalf the defendant assigns specifically the following grounds:

1. It appears on the face of the bill that the only pecuniary interest of the plaintiff in the controversy is limited to the sum of Twenty-one Hundred (\$2,100.00) Dollars alleged to be payable on the draft of that sum set forth in Paragraph 3 of said complaint and that the whole amount in controversy as between the plaintiff and defendant exclusive of interest and costs is limited to the said sum of Twenty-one Hundred (\$2,100.00) Dollars and that therefore this court is without jurisdiction of the subject matter of said complaint.

2. It appears upon the face of said bill that the plaintiff sues in equity as a simple contract creditor on a claim not reduced to judgment and without having exhausted his remedy at law for the appointment of a receiver for property upon which he asserts no specific liens and in which he asserts no specific property interest of any sort; and that the plaintiff has an adequate remedy at law. It is submitted that the rule of practice in this court is that courts of the United States have no jurisdiction over the suit of such a simple contract creditor upon the facts alleged and set forth in the bill of complaint to appoint a receiver of the property of this defendant.

HALLECK F. ROSE,
Solicitors and Counsel for Defendant.

Endorsed: Filed in the District Court on May 14, 1921.

12 *Motion of Defendant for Discharge of Receivers and for Restoration of Defendant's Property to Its Custody or to the Custody of the Department of Trade and Commerce of the State of Nebraska.*

The defendant herein moves the court to reconsider its order made and entered herein of May 2, 1921, appointing A. J. Hertz and John I. Levin, receivers of all the property of this defendant upon the bill of complainant exhibited and filed hereing upon said application for receivers and upon such hearing to vacate and set aside the order appointing said receivers and to discharge said receivers and to restore defendant's property to its own custody or to the custody of the Department of Trade and Commerce of the State of Nebraska and assigns in support hereof, the following grounds:

1. That said proceedings were had ex parte without notice to or knowledge of this defendant, without necessity for immediate action.

2. This court was without jurisdiction to make and enter said order appointing said receivers of the property of this defendant upon the bill of complainant exhibited and filed herein, it appearing on the face of said bill (1) that the pecuniary interest of the plaintiff in said controversy is limited to Twenty-one Hundred (\$2,100) Dollars upon a draft drawn by defendant and that the sum or amount in controversy as between said complainant and the defendant is said sum of Twenty-one Hundred (\$2,100.00) Dollars only and that therefore the subject matter of said suit is not cognizable by this court; and (2) that the plaintiff sues in equity as a simple contract creditor whose claim is not reduced to judgment and has not exhausted his remedy at law for the appointment of a receiver for property upon which as appears upon the face of the bill, he asserts no specific lien or property interest and that therefore a court of equity of the United States has no jurisdiction upon said bill to grant the relief prayed for of the appointment of a receiver or any equitable relief.

3. The defendant as appears upon the face of the bill of complaint of the complainant is an insurance company duly organized and existing under the laws of the State of Nebraska. By the statute law of such State of Nebraska of which it is submitted this court takes judicial knowledge without proof, the Governor of Nebraska through the agency of the Department of Trade and Commerce is vested with power to regulate, supervise and control the business of insurance and to control and regulate companies engaged
13 in said business including this defendant. The said Department of Trade and Commerce is charged with the duty of examining from time to time the capital stock, assets, and business of all insurance companies organized under the laws of said state including this defendant and also whenever it finds that any such company is in such condition that the further transaction of its business would be hazardous to its policy holders or to its [creetors], stockholders, or the public, or for other causes including insolvency, the said Department is authorized to apply to the District Court in the county or judicial district in which the principal office of such company is located for an order directing such company to show cause why the Department of Trade and Commerce should not take possession of its property, records and effects, and conduct or close its business and for such other relief as the nature of the case and the interest of its policy holders, creditors, stockholders or the public may require. And upon such application, the said state District Court of the proper district is vested with power to decree forthwith that said Department of Trade and Commerce take possession of the property records and effects and conduct the business of such property and retain possession until, on the application of the Department of Trade and Commerce or of such company, it shall, after a hearing appear to the Court that the cause of such order directing the Department of Trade and Commerce to take possession has been removed; and such court on a like application is vested with power to order the liquidation of the business of such com-

pany to be made by and under the direction of the Department of Trade and Commerce which may deal with the property, records, effects and business of such company in the name of the Department of Trade and Commerce or in the name of the company; and said District Court is also vested with power to dissolve any such company and to enjoin it, its officers and stockholders from the transaction of its business or disposing of its property, records and effects pursuant to the said statutes in Nebraska, and long prior to the filing of the bill of complaint of the plaintiff herein, to-wit: on the 12th day of April, 1921, in judicial proceedings duly and regularly had in the District Court of Douglas County, Nebraska, where this defendant then had and still has its principal place of business, the said state District Court in a suit wherein the Department of Trade and Commerce of the State of Nebraska was plaintiff and the Lion Bonding and Surety Company, a corporation was defendant, in which said defendant had appeared and answered, made and entered an order and decree that the said Department

14 of Trade and Commerce of the State of Nebraska take forthwith possession of the property, records and effects and conduct the business of this defendant, the Lion Bonding & Surety Company and retain such possession and conduct the business of said company until such time as, after hearing, it shall appear to the court that the cause of said order had been removed; and it was further decreed by said court that the defendant company, its officers, directors, stockholders and employees be and they were enjoined and restrained from in any manner interfering with the said Department of Trade and Commerce of the State of Nebraska in the carrying out of the order to take possession of the property, records and effects and conduct the business of this defendant, the Lion Bonding & Surety Company and pursuant to said order and on said 12th day of April, 1921, the said Department of Trade and Commerce duly commissioned Mr. Amos Thomas of Omaha, Nebraska, on its behalf to manage and transact the affairs of the Lion Bonding & Surety Company and for the benefit of the policy holders, creditors and stockholders, and forthwith on said day pursuant to the said order of the said state court and not otherwise, the said Department of Trade and Commerce took possession of all the records, books, premises, assets, properties and business of this defendant and thence forward has retained the same and has been engaged in the conduct of defendant's business and in the administration and liquidation thereof and is now in control of the defendant's offices, premises, records, assets and properties to the exclusion of the officers, agents and stockholders of defendant who are by the decree of said court enjoined from interfering with the acts of said Department of Trade and Commerce in that behalf.

The defendant annexes to and files with this motion a full, true and complete copy of all the aforesaid proceedings so had in the said District Court of Douglas County, Nebraska, duly certified by the Clerk of said court and exemplified as proceedings duly had and done in conformity to due process of law and entitled to full

faith and credit as such and refers to the same as record evidence of the said judicial proceedings and makes the same a part of this motion; and the defendant further files herewith and makes a part of this motion the written testimony by affidavit of Amos Thomas touching the condition of the business and affairs of this defendant and the custody, possession, control and conduct thereof by the said Department of Trade and Commerce pursuant to the order of said District Court of Douglas County and refers to the same as cause why a receiver should not be appointed and also showing that the affidavit of A. H. Karatz verifying his bill of complaint which
 15 was the only evidence offered to support the appointment of receivers herein was made by a witness having no personal knowledge of the facts alleged in said bill of complaint.

The defendant upon the facts aforesaid submits that prior custody, and control of all of the assets of this defendant for the purposes of conservation and administration had been taken by the District Court of Douglas County, Nebraska, in due and regular judicial proceedings and that the jurisdiction and authority of said state court over the subject matter was not only prior but was also the exercise of an exclusive power and jurisdiction which should be recognized as such by the courts of the United States including this court out of the mutual considerations of respect and comity which subsists between said two forums and the recognition of which is necessary to avoid unseemly conflict of judicial authority.

4. Defendant suggests that the courts of the state in which this defendant was organized and to whose sovereignty it is answerable or the United States District Court within the district of defendant's organization has the exclusive authority to entertain proceedings for the dissolution of defendant and for a general receivership and winding up of its affairs or at least that such courts should be recognized as having priority or precedence in general receiverships for the administration of all of the assets of defendant and that proceedings in other jurisdictions to conserve property found therein should be subordinate and ancillary only.

HALLECK R. ROSE,
Solicitors and Counsel for Defendant.

Affidavit.

STATE OF NEBRASKA,
County of Douglas, ss:

Amos Thomas, being first duly sworn, on oath, deposes and says:
 That the Department of Trade & Commerce by virtue of Civil Administration Code, Chapter 190 of the 1919 Session Laws of the State of Nebraska, Article 3, Section 4, Pages 5-7-9, took charge of the property, assets, books and records of the Lion Bonding & Surety Company, April 12th, 1921, through an order of the
 16 District Court of Douglas County, Nebraska, for the purpose of conserving the property and assets, eliminating waste and

for the rehabilitating of the said Company, as set forth in the above named Section.

A duly certified copy of said proceedings and judgment being presented herewith.

That by the power vested in the Department of Trade & Commerce under the order of the Court, on April 12th, 1921, said Department appointed the affiant as Special Agent, under said appointment as Special Agent, the acts of the affiant are under the direction and order of the above named court.

That the Lion Bonding & Surety Company was organized under and by virtue of the laws of the State of Nebraska, and has its principal or home office in the city of Omaha, County of Douglas, in said State.

That the Directing of the Company's business is carried on from the home office by the Special Agent, thus eliminating complications and duplication of over head expense, which would be done if directed from officers in each state.

That in the reduction of unnecessary expense, the Kansas City branch office was closed, the furniture salvaged. The business of the company is being carried on through an agent in Missouri, receiving a salary of \$100.00 per month. That a statement from the books at the Home Office, show- that the maintenance cost of the Kansas City Office for January was \$1,232.34; for February \$1,213.05; for March \$1,149.80; for April \$612.50; against a possible cost of \$100.00 per month for the maintenance of its business at Kansas City for May.

That the other agencies' expenses are as follows:

Minnesota for January \$1,887.32; February \$142.50; March \$87.50; as against \$87.50 for the maintenance of April and May, under the direction of the Special Agent.

California Agency cost for the month of January was \$1,404.80; for the month of February \$481.04; for March \$328.85; as against the flat cost of \$250.00 for April and May, under the direction of the affiant.

That all other agencies have been closed and their expenses eliminated, and agents discharged, under the direction of the Special Agent.

That the accounts with the agencies and agents are now being checked up, cancellations are being entered, and an organization has been built up for the collection of past due premiums, and other accounts due the company.

That the force of the home office has been cut more than fifty percent so that only necessary help are retained. Surplus office furniture amounting to \$583.00 has been salvaged, under the direction of the Special Agent.

That the payroll of the Company has been reduced from \$4,590.58 on April 15th, 1921, to \$2 622.92 on April 30th, 1921.

That a total reinsurance agreement covering a large amount of bank fidelity and depository bonds and burglary policies, has already been entered into with the National Surety Company thereby protecting the company against loss on the risks reinsured. That negotiations are pending for additional reinsurance in another company

licensed to engage in the lines of insurance carried by the Lion Bonding & Surety Company and can be perfected when it has been definitely determined what available assets the Company has that could be transferred to cover the net premiums.

That since the Department of Trade & Commerce has been in control of said company, it has met and paid payrolls covering contracts in Minnesota, which the company has undertaken to complete, in the amount of \$1,050.75, and has made the necessary arrangements to meet other payrolls on such contract which amount to several hundreds of dollars more.

All of these facts going to show that the assets and property of the Lion Bonding & Surety Company are not being wasted and that the rights of all creditors, stockholders and public are being protected, by not only the Department of Trade & Commerce of the State of Nebraska, and its agent, but also by and under the direction of the Douglas County District Court for Nebraska. And furthermore the rights of all creditors within the State of Minnesota are being protected.

That the expense of maintaining the only necessary office in that state, is borne from the assets of this company now located in Nebraska. All vouchers being drawn on bank accounts in
18 Omaha, the same as for all other agencies in sister states.

Further affiant sayeth not.

AMOS THOMAS,

*Special Agent for the Department of Trade &
Commerce for the State of Nebraska.*

Subscribed and sworn to before me this 12 day of May 1921.

[SEAL.]

PAULINE J. CRANE,
Notary Public.

Be it remembered, That in a certain cause heretofore pending in the District Court of Douglas County State of Nebraska entitled The Department of Trade and Commerce of the State of Nebraska vs. The Lion Bonding & Surety Company, a corporation appearing on docket 183 Number 67 there was filed in the office of the Clerk of said Court on the 12th day of April, 1921, a certain Petition, which said petition is in the words and figures following, to-wit:

Petition.

In the District Court of Douglas County, Nebraska.

THE DEPARTMENT OF TRADE AND COMMERCE OF THE STATE OF
NEBRASKA, Plaintiff,

vs.

THE LION BONDING & SURETY COMPANY, a Corporation, Defendant.

Comes now the Department of Trade and Commerce of the State of Nebraska, by J. E. Hart, the duly appointed, qualified and acting Secretary, and sheweth to the Court:

I.

The Defendant, the Lion Bonding and Surety Company, is a corporation, duly organized and existing under the laws of the State of Nebraska, organized for the purpose of transacting a general fidelity, surety, plate glass and burglary insurance business, under the laws of the State of Nebraska, and licensed by the bureau of Insurance of the Department of trade and Commerce of the State of Nebraska to conduct such insurance business and has been such corporation since October 11th, 1907, and has been so licensed since or or about November 1st, 1907.

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II.

That during the months of January, February and March, 1921, under and by virtue of the authority vested in it by the law, the Bureau of Insurance of the Department of Trade and Commerce of the State of Nebraska, caused an examination to be made of the said Lion Bonding and Surety Company, by its regularly appointed, qualified and acting Examiner, Fred C. Bailey, who was assisted in said Examination by duly qualified and acting Examiner representing the Insurance departments of the States of Iowa, Minnesota, Kansas and Idaho, and that said Examiner compiled a report, showing the result of said examination and his findings and recommendations in regard thereto which said report was filed as a part of the official records of the Bureau of Insurance of the State of Nebraska on the 4th day of April, 1921, a certified copy of which report is attached hereto, marked Exhibit A, and made a part of this Petition, the same as if set out in full in this pleading.

III.

That by and after such examination the said Lion Bonding & Surety Company was found to be, and is in such a condition that its further transaction of business would be hazardous to its policy holders, its stockholders, its creditors, and the public, in that the surplus of said Lion Bonding & Surety Company has been dissipated and reduced; that its capital stock and surplus are entirely dissipated and gone, and that a computation of its assets and liabilities made according to the insurance laws of the State of Nebraska, show that such Company is now without a capital or surplus; that the company is insolvent, and is unable to pay its claims, or to meet its liabilities to creditors or stockholders. That the true financial condition of said company is set out more fully on page 10 and 11 of Exhibit "A," attached hereto.

IV.

That said corporation has wilfully violated the laws of the State of Nebraska in that it has accepted, as part of its assets, bonds and notes, secured by first mortgages on real estate in this and other States of

the United States, which were not worth, with improvements thereon, at least double the sum loaned thereon, as required by law, and as set out more fully in the report attached hereto, marked Exhibit "A," pages thirteen and fourteen.

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V.

That the said Company has wilfully violated the laws of the State of Nebraska, and has been conducting its business in an unsafe and unauthorized manner, in that it has made a practice of drawing drafts or bills of exchange upon Banks in which it had no proper credit, or in honoring drafts or bills of exchange from Banks who had no credit with the Company which practice is commonly known as "kiting of drafts." These transactions have taken place in conjunction with the First National Bank of Carrol, Nebraska, and the Guernsey Seed Company of Yankton, South Dakota, as more fully set forth in the report of examiner, Exhibit "A," page 20.

VI.

That the Company has conducted its business carelessly, negligently, irregularly and in wilful violation of law, contrary to the best interests of the stockholders, policy holders, creditors, and the public in many and various ways, as set out more fully in the report attached hereto, and marked "Exhibit "A."

Wherefore, This Plaintiff, the Department of Trade and Commerce of the State of Nebraska, prays that this Court direct the Department of Trade and Commerce to take possession of the property, records and effects and conduct the business of the defendant corporation, the Lion Bonding and Surety Company, and retain such possession and conduct the business until such time as after a hearing it shall appear to the Court that the cause of the order directing the Department of Trade and Commerce to take possession has been removed, and that the Company can properly resume possession of its property, records and effects and the conduct of its business; and further prays that an order may issue forthwith from this Court, directing the Defendant, the Lion Bonding and Surety Company to show cause why the Department of Trade and Commerce should not so take possession of its property, records, and effects and conduct its business; and further prays that pending the return of such order to show cause and a hearing thereon, this Court may issue an order restraining the defendant, the Lion Bonding and Surety Company, from the transaction of its business, and from the disposition of any of its property, records and effects until the further order of this Court; and for such other and further relief as may to the Court seem just and equitable under the circumstances.

THE DEPARTMENT OF TRADE AND COM-
MERCE OF THE STATE OF NEBRASKA,

By J. E. HART,

Secretary.

STATE OF NEBRASKA,
County of Douglas, ss:

J. E. Hart, being first duly sworn, on oath says that he is the duly appointed, qualified, and acting Secretary of the Department of Trade and Commerce of the State of Nebraska; that he has read the foregoing petition, knows the contents thereof, and that the facts set forth therein are true as he verily believes.

J. E. HART.

Subscribed and sworn to before me this 9th day of April, A. D. 1921.

[SEAL.]

GEORGE W. PRATT,
Notary Public.

EXHIBIT "A."

Examination of the Lion Bonding & Surety Company of Omaha, Nebraska, as of January 31st, 1921.

Omaha, Nebraska, April 4, 1921.

Hon. A. L. Harty,
Superintendent of Insurance, & Chairman of Committee of Examinations,
Jefferson City, Missouri:

Hon. W. B. Young,
Chief of Bureau of Insurance,
Lincoln, Nebr.:

Hon. Frank L. Travis,
Superintendent of Insurance,
Topeka, Kansas:

Hon. Gust Lindquist,
Commissioner of Insurance,
St. Paul, Minnesota:

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Hon. H. C. Savage,
Commissioner of Insurance,
Des Moines, Iowa:

Hon. H. J. Brace,
Director of Insurance,
Boise, Idaho:

SIRS:

Pursuant to your instructions we have made an examination of the books and affairs of the Lion Bonding & Surety Company of Omaha, Nebraska, and herewith submit the following report of our investigation. In order to show certain stock transactions which will be treated later in this report, this examination was made as of January 31st, 1921, and covers the period from the date of the last examination to January 31st, 1921. The financial statement of this report shows items of income and disbursements for the month of January, 1921, and assets and liabilities as of January 31st, 1921.

History and Objects of the Company.

This Company was organized under the laws of the State of Nebraska, October 11th, 1907, and began writing business on November 2nd, 1907. At the present time the Company is writing Fidelity, Surety, Plate Glass and Burglary Insurance. December 31st, 1920, they ceased writing Automobile Insurance and on the same date, they entered into a reinsurance contract with the Lion Accident and Casualty Company, reinsuring all their health and Accident business. This contract did not actually become effective until the 28th of February, 1921, and for that reason and for the further reason that the Lion Accident and Casualty Company is not licensed to transact business in any state other than Nebraska, your examiners have set up the liabilities on the unearned premiums of the Accident and Health business of the Lion Bonding Company, ceded to the Lion Accident and Casualty Company.

Territory.

At the present time the company is licensed to write business in California, Idaho, Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Montana, Nebraska, North Dakota, South Dakota, Oregon, Oklahoma, Texas, Utah, Wyoming and Washington.

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Management.

At the time of this examination the following officers and Directors were in active charge of the affairs of the Company:

Officers:

E. R. Gurney, President.
H. C. Leigh, Vice President.
E. P. McDonald, Vice President.
Dan F. Brown, Vice President.
Phil H. Kohl, Treasurer.
Chas. C. Brant, Secretary.
F. P. Cowdrey, Ass't Treasurer.
R. A. Mackay, Ass't Secretary.

Directors:

E. R. Gurney.	G. A. Schroeder.	F. B. Knapp.
Phil H. Kohl.	H. C. Leigh.	U. S. Conn.
C. E. Negres.	Fred Volpp.	Ed. P. McDonald.

Salaries:

The salaries paid the various officers are as follows:

President	\$7,200.00
Vice Presi-ent	\$3,900.00
Vice Presi-ent	3,600.00
Vice Presi-ent	3,900.00
Treasurer	None.
Secretary	\$3,300.00
Assistant Treas.	3,600.00
Assistant Sec.	1,800.00

Fidelity Bonds:

The following officers are bonded in a company licensed to transact business in the state of Nebraska in the amounts as follows:

H. C. Leigh	\$2,500.00
E. P. McDonald	1,000.00
Dan F. Brown	1,000.00
Chas. C. Brant	1,000.00
E. P. Cowdrey	2,500.00
W. A. Robinson	1,000.00
F. B. Alldredge	1,000.00

All other employees are bonded from \$250.00 to \$1,000.00 each. Your examiners submit that the amounts are wholly inadequate for the financial responsibility of the various officers.

24 Life Insurance:

The company carries Life Insurance Policies on the officers as listed below:

Name.	Amount.	Expiration date.
E. R. Gurney	\$5,000.00	Apr. 6, 1921.
E. R. Gurney	6,000.00	Febr. 20, 1921.
E. R. Gurney	10,000.00	May 3rd, 1921.
E. R. Gurney	14,000.00	March 10, 1921.
E. R. Gurney	5,000.00	June 14, 1921.
E. R. Gurney	5,000.00	Febr. 20, 1921.
F. B. Alldredge	6,000.00	March 5, 1921.
F. B. Alldredge	4,000.00	Febr. 28, 1921.
H. C. Leigh	5,000.00	Febr. 20, 1921.
John A. Rine	10,000.00	Febr. 20, 1921.
<hr/>		
\$70,000.00		

During the month of January, 1921, an executive committee composed of the active officers of the company was appointed to handle the affairs of the company and an advisory committee has been

elected, consisting of the larger stockholders to meet and consult with the officers and directors on the affairs of the company. It is regrettable that this action was not taken at the time the present management took charge of this company's affairs.

Mr. Gurney, the president of this company is interested in thirty-five or more Nebraska Banks. He is not an insurance man and much of his time is given to the interests of these banks and he has allowed the insurance company to become a clearing house for the "Kiteing" of drafts for banks.

The subordinate officers and the condition of the records reflect the executive management.

Capital Stock.

On the date of organization, the authorized capital of the company was \$250,000.00 par value of \$100.00 per share. \$100,000.00 of this amount has been subscribed, and \$50,000.00 paid in with \$500.00 surplus. The paid capital was increased in 1908 to \$116,750.00 and to \$129,000.00 in 1909. It was further increased to \$204,000.00 paid in capital in 1910, together with a surplus of \$25,000.00. Again in 1912, it was increased to \$252,000.00 and \$18,700.00 paid in surplus.

On February 19th, 1918, the authorized capital of the company was increased to \$1,000,000.00. A resolution was passed by the Board of Directors giving Mr. E. R. Gurney and W. O. Van Wyck, for the consideration of the sum of \$500.00 exclusive option to purchase for themselves or their order, all or any part of the said increased capital stock at \$145.00 per share, net to the company.

During the year 1918, there was issued in accordance with the terms of this agreement 2,480 shares of stock for which \$248,000.00 was added to the capital and \$111,600.00 was added to the surplus. On January 13, 1919, the Articles of Incorporation were amended and the capital stock fixed at \$600,000.00 divided into 6,000 shares at par value of \$100.00 per share.

On February 28, 1919, there was issued in accordance with the amended articles, 1,000 shares of stock at \$100,000.00 which increased the capital, and added \$45,000.00 to surplus, thus making the capital paid in \$600,000.00.

Messrs. Gurney and Van Wyck, entered into a co-partnership, known as the Bankers Sales Agency for the purpose of handling this stock. As the transaction with this company was treated in the last committee examination, your examiners did not deem it necessary to go into all the transactions in this report, other than to state that the Bankers Sales Agency has turned over to the Lion Bonding & Surety Company, all the net profits accruing from the sale of the stock. The Lion Bonding Company paying their outstanding obligations which amounted to approximately \$13,000.00 during the year 1920.

The Bankers Sales Agency in May, 1919, signed an assignment

and agreement with the Secretary of the Lion Bonding Company, copies of this agreement are attached hereto, marked Exhibit "A."

On December 22nd, 1920, the directors reduced the Capital Stock of the company to \$300,000.00. This action was ratified by the stockholders, January 28th, 1921. The capital stock of this Company on January 31st, 1921, was \$300,000.00 as shown in the financial statement which is part of this report. The capital stock was impaired in 1920, and about August the 1st the officers borrowed from certain banks in Nebraska on their personal notes and through securities delivered to the Lion Bonding Company \$250,000 00 and contributed it to the surplus account. During the same month an additional \$50,000.00 was contributed to surplus in the same manner. This contribution consisted of certificates of deposit,

26 bonds, stocks and mortgages, etc. On December 17th, 1920, the certificates of deposit, bonds, stocks and mortgages, etc., were returned to the banks and the notes of [of] the officers, which the banks held were returned to the makers. Following the return of this contribution, the capital stock was reduced to \$300,000.00 to relieve the impairment. This transaction was not shown in the annual statement to the various Departments of Insurance on December 31st, 1920.

This examination commenced on the 16th day of February, 1921, and notwithstanding the fact that the directors by resolution reduced the capital stock of this company on December 22nd, and their action was ratified by the Board of Directors on January 28th, no effort has been made by the officers of this company to recall the certificates and reissue the same on the reduced capital of \$300,000.00 and your examiners were informed that they had no intention of doing so and not until the examiners insisted and had prepared and approved a resolution to this effect, was any effort made by the officers to recall this stock.

Annual Statement.

Due to the condition of the Company's records, no attempt was made to verify the annual statement as of December 31st, 1919. An attempt was made to verify the items of the financial statement as submitted to the commissioners on December 31st, 1920, by the Company, but as practically none of the items could be verified, the statement was disregarded entirely. During the year 1920, this Company was examined for the United States Government by Joseph Froggatt & Company of New York. An effort was made to use their figures to work from, but many errors and misrepresentations were found in their report and this also had to be disregarded.

In connection with the 1920 Annual Statement, your attention is called to several items in the reported Claim Liability. Notwithstanding the fact that the average payments on the Health and Accident Claims amounted to \$15,000 00 for a month, only \$7,500.00 was shown as the Accident and Health Claim Liability. There was no effort made to set this liability up by the case method, nor were

your examiners able to discover who was responsible for putting this figure in the statement.

The Automobile Claim Liability was set up by the case method by certain officials of the Company and according to the figures shown on their work sheets, this liability amounted to approximately \$189,000.00. However, for some reason, which the officers of the Company did not explain, this amount was shown as \$52,250.00.

From a typewritten statement found in the files of the Company, it was shown that the Liability for Unpaid Fidelity and Surety Claims amounted on December 31st, 1920, to \$89,209.34. The amount as set up in the annual statement of this date was \$49,096.94. No explanation of this figure was given your examiners.

Your attention is also called to the fact that on December 31st, 1920, the Company actually had a liability for borrowed money of \$20,277.25. This liability was not shown, the Company in making up its statement, shrinking the Certificate of Deposit account by the above amount.

Schedule One.

Capital Stock.

1. Amount of Capital paid up.....	\$300,000.00	
2. Amount of ledger assets (as per balance) December 31st, 1920		\$1,681,640.76
Extended at		<u>\$1,681,640.76</u>

Income.

3. Fidelity:

Gross premiums written and renewed..	\$32,933.25	
Deduct:		
Reinsurance	\$9,183.64	
Return premiums	511.24	
Premiums on policies not taken	3,311.63	
	<u>13,006.51</u>	
Net Premium		<u>19,926.74</u>

4. Surety:

Gross Premiums written and renewed..	41,753.87	
Deduct:		
Reinsurance	\$15,606.53	
Return premiums	2,484.72	
Premiums on policies not taken	8,544.20	
	<u>26,635.45</u>	
Net Premium		<u>25,118.42</u>

5. Plate Glass:

	Gross Premiums written and renewed..	79,861.47	
28	Deduct:		
	Return premiums	2,023.65	
	Premiums on policies not taken	12,069.72	
		<u>14,093.37</u>	
	Net Premium		65,768.10
6.	Burglary:		
	Gross premiums written and renewed..	13,820.59	
	Deduct:		
	Reinsurance	4,260.58	
	Return premiums	178.02	
	Premiums on policies not taken	1,305.89	
		<u>5,744.49</u>	
	Net Premium		8,076.10
7.	Automobile:		
	Gross premiums written and renewed..	24,495.27	
	Deduct:		
	Reinsurance	68.84	
	Return premiums	10,579.02	
	Premiums on policies not taken	5,891.89	
		<u>16,539.75</u>	
	Net Premium		7,955.52
8.	Totals		\$126,844.88
9.	Gross interest on mortgage loans.....	\$2 163.00	
10.	Gross interest on bonds and dividends on stock	25.00	
11.	Gross interest on deposits in Trust Company-s and Banks (less \$61.18 accrued interest on Certificates of Deposit).....	1,114.31	
12.	Gross interests from all other sources.....	198.20	
13.	Gross rents	200.00	
14.	Total interest and rents		3,700.51
15.	Commission on Accident & Health (Lion Ac- cident & Casualty Co.).....	25,017.17	
16.	Check protested and returned.....	400.00	
	Total		25,417.17
17.	From agents' balance previously charged off.	127.98	
18.	Borrowed money	20,277.25	
	Total		20,405.23
19.	Total Income		176,367.79
20.	Amount carried forward		\$1,858,008.55

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Schedule Two.

Amount carried forward \$1,858,008.55

Disbursements.

1. Accident and Health:

Gross amount paid for losses \$17,186.96

Deduct:

Reinsurance \$53.56 53.56

Net amount paid for losses \$17,133.40

2. Fidelity:

Gross amount paid for losses 5,000.00

Deduct:

Salvage 110.31 110.31

Net amount paid for losses 4,889.69

3. Surety:

Gross amount paid for losses 10,406.68

Deduct:

Reinsurance 40.13

Salvage 2,225.57

3,265.70

Net amount paid for losses 8,140.98

4. Plate Glass:

Gross amount paid for losses 35,269.61

Deduct:

Salvage 664.75 664.75

Net amount paid for losses 34,604.86

5. Burglary:

Gross amount paid for losses. 4,374.45

Deduct:

Salvage 1,227.63 1,227.63

Net amount paid for losses 3,146.82

6. Automobile:

Gross amount paid for losses 28,617.83

Deduct:

Salvage 389.34 389.34

Net amount paid for losses 28,228.49

7.

Total 96,144.24

8. Investigation and adjustment of claims:

Automobile 1,434.43

Miscellaneous 2,451.52

3,885.95

9. Commissions:

Fidelity	2,993.79
Surety	9,382.84
Plate Glass	20,495.41
Burglary	1,866.00
Automobile	4,077.35

30

38,815

10. Salaries, fees and all other compensation of officers, directors, trustees and employees.....

10,832.

11. Salaries and expenses of agents not paid by commissions..

450.

12. Surgeon's fees

25.

13. Rents

421.

14. Insurance department license and fees.....

498.

15. Federal taxes

1,738.

16. Occupation tax

105.

17. Personal tax

24.

18. Legal expense

50.

19. Advertising

2,170.

20. Printing and stationery

2,577.

21. Postage, telegraph, telephone and express.....

1,409.

22. Furniture and fixtures

921.

23. Miscellaneous:

Mercantile agency reports.....	51.75
Traveling expense Home office.....	922.43
General Expenses	334.45
Subscriptions	33.33
Branch Offices	12,442.18
Accident & Health	713.60

14,497.

24. Decrease on ledger liabilities (reinsurance).....

23,303.0

25. Development expense

445.6

26. Borrowed money repaid

20,277.2

27. Gross loss on sale of ledger assets:

Certificates of deposit discounted.....

1,700.0

28. Total Disbursements

\$220,363.5

29. Balance

\$1,637,645.0

Schedule Three.

Ledger Assets.

1. Book value of real estate.....

27,425.0

2. Mortgage loans on real estate.....

337,337.2

3. Loans secured by pledge of bonds, stocks or other collaterals

83,985.0

4. Book value of bonds.....

76,150.0

5. Book value of stocks.....

101,200.0

6. Cash in Company's office.....

\$800.00

Cash in Branch Offices

6,750.00

Deposit in Trust Companies and banks, not

on interest

1,928.26

Deposits in Trust Companies and banks on

interest

45,911.64

55,389.0

7. Premiums in the course of collection on Policies or renewals effective on or after November 1st, 1920.....

564,121.47

Effective prior to November 1st, 1920.....

132,394.72

Total

696,516.11

31 Other Ledger Assets.

8. City and County Warrants.....	51,061.26	
Tax Bills	24,234.86	
Advances to Agents	1,977.73	
Accounts Receivable	48,072.55	
Debenture Notes	16,961.30	
War Saving Stamps	3,454.45	
Advances on Contracts.....	109,521.52	
Vendors' liens	4,350.00	
		<u>259,641.61</u>
9. Ledger Assets as per Balance.....		\$1,637,645.04

Non-ledger Assets.

10. Interest due and accrued on Mortgages....	\$13,793.44	
11. Interest due and accrued on Bonds.....	2,695.68	
12. Interest due and accrued on Collateral loans	435.14	
13. Interest due and accrued on Warrants.....	6,035.23	
14. Interest due and accrued on Certificates of deposit	219.40	
15. Interest due and accrued on Tax Bills.....	3,805.50	
16. Rents due	85.00	
17. Furniture and Fixtures.....	25,000.00	
18. Warrants	2,704.26	
19. Omaha-Wyoming Oil Company's Stock.....	16,000.00	
20. Commissions due from reinsuring Company.	29,529.57	
21. Reinsurance recoverable on losses.....	18,207.45	
		<u>\$118,510.07</u>
Total non-ledger assets.....		
Gross assets		<u>\$1,756,155.71</u>

Deduct Assets Not Admitted.

22. Book value of Real Estate over market value	8,800.00	
23. Mortgage Loans	16,300.00	
24. Collateral Loans	8,735.06	
25. Book value of Bonds & Stocks over market value (Bonds, 4,926 Stocks, 554.00).....	5,480.00	
26. Independent Quarry Stock.....	75,000.00	
27. Cash in office (bad check).....	800.00	
28. Cash in Branch Offices.....	6,750.00	
29. Cash in Bank (Bank in Receivership).....	58.57	
30. Protested Certificate of Deposit.....	2,781.45	
31. Premiums on course of Collection (prior to November 1st)	132,394.72	
32. Tax Bills	6,131.64	
33. Advances on Contracts	103,521.52	
34. Advances to Agents	1,977.73	
35. Accounts Receivable	48,072.55	
36. Omaha-Wyoming Oil Stock.....	16,000.00	
37. Furniture and Fixtures	25,000.00	
		<u>457,803.24</u>
Total non-admitted assets.....		
Total Admitted Assets.....		<u>\$1,298,352.47</u>

*Schedule Four.**Liabilities.*

1. Losses and Claims:

2.	Accident and Health	\$38,554.33	
3.	Fidelity and Surety.....	139,763.24	
4.	Plate Glass	46,716.79	
5.	Burglary and Theft.....	1,396.63	
6.	Automobile	179,711.92	
Total Unpaid Claims.....			\$406,142.91
7.	Adjustment Expense		16,240.00
8.	Unearned Premium Reserve.....		946,653.45
9.	Commissions		157,954.01
10.	Unpaid Salaries, Rents and Expenses.....		19,782.57
11.	Estimated Amount hereafter payable for taxes.....		45,000.00
12.	Reinsurance Premiums		84,370.21
13.	Total Liabilities except Capital Stock.....		\$1,676,143.15
14.	Capital Paid up	\$300,000.00	
15.	Deficit to Stockholders.....	677,790.68 [‡]	
16.	Deficit to Policyholders		377,790.68 [‡]
Total			\$1,298,352.47

*Comments on Schedules.**Income:*

The items appearing in this schedule are those usually found under this classification and only such items as are worthy of extended comment will be treated here.

Item 2. Amount of Ledger Assets as of December 31st, 1920, \$1,681,640.76.

Although your examiners were unable to verify the annual statement as of December 31st, 1920, we have used the ledger balance of that date as our starting figure, making the necessary corrections in the schedule of Assets.

Item 7. Automobile Property Damage and Collision. The Company ceased writing Automobile business on December 31st, 1920, and this item of premiums income represents the renewal premiums carried forward for the month of January, 1921.

Item 2. Commissions on Accident and Health Business, \$25,017.17. This item represents a part of the commissions received by the company from the reinsurance of the Accident and Health Business to the Lion Accident and Casualty Company. This contract of reinsurance will be further treated under general comments.

Item 18. Borrowed Money, \$20,277.25. This amount was not actually borrowed during the period covered by this financial state-

[‡] Denotes Red Figure.

ment, but is shown here as Income for the reason that no liability for same was shown in the statement as of December 31st, 1920. The amount is shown as repaid at line 26, Schedule 2 of Disbursements.

Disbursements, Schedule 2:

Your examiners made various test checks of the Disbursements and the items appearing in this schedule are for the most part self-explanatory.

Item 24. Decrease in Ledger Liabilities Reinsurance, \$23,303.02. This item is the balancing figure determined by the decrease in such liability since December 31st, 1920 and will be further commented on under Item 12, Schedule 4 Liabilities.

Item 26. Borrowed money repaid, \$20,277.25. See comments on Income of Borrowed Money Item 18, Schedule 1.

Schedule #3, Assets:

An actual audit was made of all the assets of this company. These assets are shown in this financial statement as per the Ledger Accounts and the corrections necessary so as to conform with the audit, are made in the Non-Ledger and Non-Admitted Assets. At the date of Writing this report, the journal entries correcting these Ledger Accounts have been made by the company.

Item 1, Real Estate, \$27,425.00:

This amount represents the book value of various tracts of land in Utah, Texas, Wyoming and Nebraska which this Company secured as salvage. Without a re-appraisal, the company on December 31st, 1920, arbitrarily raised the value of their property. Evidence in their file shows that the property in Texas and Wyoming was offered for sale, within the last three months in 1920 for \$8,800.00 less than the book value as carried. This excess amount was deducted as non-admitted asset in line #22.

34 Item 2, Mortgage Loans, \$337,337.22:

All mortgages and papers in connection therewith, in the company office files and also those on file with the state department, were carefully inspected; many instances were found where the papers in the pouches were incomplete and also where necessary papers were missing. Your examiners in this financial statement, have not taken exception to numerous mortgage loans that need certain minor corrections. The attention of the Company officials has been called to these details and your examiners insist that the files should be completed in all cases so as to conform with the general requirements.

For the purpose of this examination, your examiners have deducted the amount of \$16,300.00 as a Non-Admitted Asset as shown on line #23, on the following basis:

Loan #246, for \$7,000.00:

Appraised valuation of this land is \$10,000.00 and the buildings \$2,500. Not covered by Insurance; letters in the files show that a forced sale of the land would bring \$8,000.00.

On this loan, we have deducted \$3,000.00

Loan #288, for \$9,000.00:

Appraised valuation of this land is \$18,000.00 Mortgage originally run to Husband and Wife jointly. The Assignment of the Mortgage was only executed by the Husband, therefore the company only owns one half the mortgage or fifty per cent.

We have deducted 4,500.00

Schedule #3, Item #2, Continued.

Loan #293, for \$21,600.00:

Appraisal on file places value of this property at \$24,000.00. However this property sold on the same day the mortgage was executed for \$25,600.00.

On this loan we have deducted 8,800.00

Total amount deducted 16,300.00

Item 3, Collateral Loans, \$83,925.06:

35 The records of the Company show Collateral Loans to the amount of \$83,985.06, whereas, by actual audit the amount found was only \$75,250.00. The difference of \$8,735.06, deducted as a non-admitted asset as of Line 24, Schedule #3.

Item 4, Book Value of Bonds, \$76,150.00:

This item is composed of the following bonds:

Liberty Bonds	\$32,150.00
City Des Moines, Iowa, Sewer Bonds	2,000.00
St. Cecelias Cathedral, Corp. Bonds, Omaha.....	1,000.00
Douglas County, Nebraska, Court House Bonds.....	1,000.00
City of McCook, Nebraska, Water Bonds	1,000.00
Taylor County, Texas, Court House Bonds.....	19,000.00
Baker White Pine Lumber Co.	20,000.00
Total	<u>\$76,150.00</u>

Your Examiners determined the Market Value of these Bonds from the Commissioner's Book of valuations and found the same to be \$71,224.00. The excess of the book value over the market value

is \$4,926.00, which amount has been deducted as a non-admitted asset, (See Line #24), Schedule #3.

Item 5, Book Value of Stocks, \$101,200.00.

This item is composed of the following stocks:

	No. of shares.	Amount.
Nebr. Savings & Loan Ass'n.....	6	\$600.00
States Savings & Loan Ass'n.....	10	1,000.00
Conservative Sav. & Loan Ass'n.....	1	100.00
P. McDonald Land Co., Duluth, Minn.....	..	14,500.00
Eastern Realty Co., San Antonio, Texas.....	..	10,000.00
Independent Quarry & Con. Co., St. Louis, Mo...	..	75,000.00
		<hr/> \$101,200.00

Eastern Realty Company:

The Eastern Realty Company is incorporated under laws of the state of Texas and it was organized and the stock is owned by the following Insurance Organizations:

- National Surety Company.
- Lion Bonding & Surety Company.
- American Indemnity Company.
- Fidelity and Deposit Company.
- Aetna Insurance Company.

All of these Companies were interested as reinsurers with the National Surety Company in a Surety loss in San Antonio, Texas.

In making settlement of the claim, the Conroy Building of that city was secured as salvage and the Eastern Realty Company was organized to control the same with a total capital stock of \$85,550.00. Since this company was incorporated the property has been sold and is now being paid for on the installment plan.

The stock owned by the Lion Bonding and Surety Company has a par value of \$15,743.33. Your examiners have accepted the market value of \$60.00 per share as placed upon this stock by the Insurance Department of the State of New York, making the total market value \$9,446.00. The excess of book value over market value \$554.00 is deducted as a non-admitted asset at Line 25, Schedule #3.

The Lion Bonding & Surety Company also owns Debenture Notes of the Eastern Realty Company in the amount of \$16,961.30, which has been allowed at par value and is shown in this schedule of assets at line 8.

Independent Quarry and Construction Co.:

The Independent Quarry & Construction Company is a corporation located at St. Louis, Missouri and is the owner of certain quarry and construction property, with a paid in capital of \$75,000.00.

This property was appraised for your examiners and the Company by the Southwestern Appraisal Co., of Kansas City, Mo., and a copy of their report is on file with the department of Trade and Commerce of the state of Nebraska. Your examiners also made an investigation of this property and the financial conditions of the Quarry Company and this investigation in conjunction with the Appraiser's report shows the book value of the stock to be approximately \$167.00 a share. In their annual statement as of December 31st, 1920, the Lion Bonding & Surety Company carried this item as an asset on the contention that they were the sole owners of this stock and such ownership is still claimed by them. However, after very careful investigation, it is the opinion of your examiners that this stock is held by the Lion Bonding & Surety Co., purely as collateral to secure the advances of money to the Quarry Company. This position is supported by evidences found in the files of the Lion Bonding & Surety Company and in St. Louis and certain letters pertaining thereto and a copy of a report of this transaction made by a representative of the Lion Bonding & Surety Company is attached hereto, as exhibit "B."

Item 6, Cash in office—Amount, \$800.00:

This item consists of a bad check given to the Company and is at the time of writing this report being paid in installments, the maker paying a small sum each week. This amount is deducted as non-admitted asset at line 27, Schedule #3.

Item 6, Cash in Branch Offices—Amount, \$6,750.00:

As this has been disbursed, it was deducted as a non-admitted asset at line 28, Schedule #3.

Item 6, Cash in Banks—Amount, \$1,928.26:

This item was verified in the usual manner and the bank balances reconciled with the company's account. Included in this item is a deposit of \$58.57 in a bank which is in the hands of a receiver. This item has been deducted at line 29, Schedule #3.

Item 6, Certificates of Deposit—Amount, \$45,911.64:

The verification of this item disclosed the fact that there was included a protested certificate of deposit in the amount of \$2,781.45 which is deducted at line 30, Schedule #3, in Assets Non-Admitted.

Item 7, Premiums in the Course of Collection—Amount, \$696,516.19:

This amount was taken from the agents' ledgers and the amount of such premiums, more than 90 days old, was determined as to the recorded dates of policies. Of this amount, \$132,394.72 was found to be more than 90 days past due, which amount was deducted as a non-admitted asset at line 31, Schedule #3.

Item 8, City and County Warrants—Amount, \$51,069.26:

This amount as shown here was carried in the ledger; however, by actual audit the company was found to be in possession of warrants in the amount of \$53,773.52. The additional amount of \$2,704.26 is carried as a non-ledger asset at line 18, Schedule #3.

Item 8, Tax Bills—Amount, \$24,234.86:

The ledger account as here shown is \$6,131.64 over the amount of tax bills the company actually own. The necessary correction was made under non-admitted assets at line 32, Schedule No. 3.

38 Item- 8 and 17, Advances to Agents, Accounts Receivable, and Furniture & Fixtures:

Advances to Agents	1,977.73
Accounts Receivable	48,072.55
Furniture and Fixtures	25,000.00

The items have been treated in accordance with the Departmental custom in handling items of this class and since they are not allowable assets they show as deductions at lines 34, 35 and 37, Schedule #3.

Item 8, Advances on Contracts—Amount \$109,5p1.5p:

This is the amount of advances which the company has made on contracts for construction work taken over under Surety Losses. Of this amount, your examiners have allowed as an asset, \$6,000.00 which is actually due and paya le to the company on work completed and formally accepted. The difference of \$103,521.52 is deducted as a non-admitted asset at line 33, Schedule #3.

Item 19. Omaha Wyoming Oil Company stock—Amount, \$16,000.00:

This represents a salvage item on a Surety Loss, taken in on a contract on which the assured assigned to this company, 2,979,-618 $\frac{2}{3}$ shares in the Omaha-Wyoming Oil Co., at a par value of one cent per share. The Company values this stock at \$16,000.00. As this is not an asset allowed by law for an Insurance Co., it has been deducted as an non-admitted asset at line 36, Scheule #3.

Other items in this schedule were verified in the usual manner and found to be as shown.

Liabilities.

Unpaid Claims.

Item I, Accident and Health—Amounts \$38,554.33:

This item consists of 669 claims and was set up by the case method and is believed to be ample. Since Decem`er 31, 1920, the Acci-

dent and Health claims have been handled by the Lion Accident and Casualty Company, pending the approval by the Nebraska Department of a Reinsurance contract on which the Lion Accident and Casualty Co., will reinsure all the Lion Bonding & Surety Company accident and health business. The Lion Accident and Casualty Company is very prompt in the settlement of these claims.

39 Item 6, Automobile—Amount, \$179,711.92:

The Automobile Liability consisting of 1,260 claims was also set up by the case method. Some of these claims dated back as far as February 1919, and it seems that the Company's policy in paying these claims is to scale them as much as possible.

The files in connection with all other unpaid losses incurred prior to January 31st, 1921, and reported to the company were carefully examined and the liability set up as to each individual case. For the most part the claims were adjusted on a fair and equitable basis.

In connection with the Surety Losses, the Company has in the past taken over and attempted to complete a number of construction contracts. This, in the opinion of your examiners has caused the company a large amount of additional expense and excessive losses.

Item 7, Adjustment Expense—Amount, \$16,240.00:

This amount was computed on the [basis] of 4% of the total claim liability. The ratio of 4% being based upon the company's past experience and is believed to be ample.

Item, 8, Unearned Premium Reserve—Amount, \$946,653.45:

The total amount of premiums in force amounting to \$1,950,064.69 was determined by the company and the reserve compiled by them on the pro-rata basis, under the supervision of your examiners. A recapitulation of premiums in force and unearned premiums reserve is attached hereto as Exhibit "c."

Item 9, Commissions—Amount, \$157,954.01:

This item was set up on the basis of 28% of the premiums less than 90 days past due and is believed to be ample, 28% being approximately the average commission paid.

Item 10, Unpaid Salaries, Rents, and Expenses—Amount, \$19,782.57:

This item is for miscellaneous bills,— The greater part of which was a liability as of December 31st, 1920, and was determined from the statement on file.

Item 12, Reinsurance Premium—Amount, \$84,370.21:

This liability is the amount of reinsurance premium, due other companies for reinsurance ceded by this company. It is here shown in the gross, the corresponding credit for commissions being shown as a non-ledger asset at line 20, Schedule #3. In the annual statement as of December 31st, 1920, the amount was shown net as \$61,990.91, when it should have been \$107,673.23. The decrease in the ledger liabilities of \$23,303.02 is shown in the disbursement Schedule #2, Line 24.

General Comments.

Reinsurance of Accident & Health Business:

The Lion Bonding & Surety Company has attempted to effect a reinsurance agreement with the Lion Accident and Casualty Company, with whom it offices, whereby the Accident Company was to take over all of the accident and health business of the bonding company. As this transaction has not, at the date of this examination, been entirely completed and because of the fact that the Casualty Company is only licensed to do business in the State of Nebraska, for the purpose of this joint examination, your Examiners have not recognized its contract as affecting the Bonding Company.

Books, Records, and Securities:

The books and records of this company are incomplete, the journals and ledgers not having sufficient information on a majority of the transactions entered therein, which necessitated your Examiners running down almost every transaction. The agents' ledgers in particular were very slovenly kept, no attempt being made by the company to balance them with the control accounts in the general ledger. This matter has been brought to the attention of the officers of this company at the time of the last departmental examination and by Froggatt & Company in their examination as of June 30, 1920, and as yet no steps have been taken to follow up the suggestions made as to the proper way to handle these records. The securities were handled very carelessly, being scattered all over the office, and papers which should have been attached to them, in many instances, were missing. The record of these Securities in cases had to be balanced by your examiners and many corrections made.

The general condition of the books and records is easily traceable to the inefficient management and lack of executive supervision.

Special Deposits:

The Company has at the date of this examination, deposits in the following State Insurance Departments in the amount as shown:

Ohio	25,705.51
Oregon	10,000.00
Texas	50,000.00

These deposits are supported by Certificates of Deposit from the respective departments, attached hereto as Exhibits "D," "E" and "F."

Unlisted Assets:

The Company never has made any attempt to set up and report its unlisted assets in Schedule "X" of the Annual Statement blank. Much property and equipment, scattered all over the territory, has been acquired as salvage and your Examiners were unable to find any systematic or concise record of such items, the records being for the most part in the minds of the heads of the Claim Department. A partial list of construction equipment has been obtained and the same is attached hereto as Exhibit "G." Your Examiners insist upon the immediate installment of a record containing full and complete detail as to much salvage and also that the same be reported as required by the Statement blank.

Kiteing of Drafts:

This Company has been made a Clearing House for the systematic "kiteing" of drafts with various banks throughout Nebraska, the banks drawing on this company and the company in turn honoring the drafts and drawing back on the banks. An example of these transactions is attached hereto as Exhibit "H."

Respectfully submitted,

(Signed)

FRED A. BAILEY,

Examiner for Nebraska Insurance Department.

H. D. DURHAM,

Examiner for Iowa Insurance Department.

WALTER W. BELFORD,

Examiner for Minn. Insurance Department.

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R. M. MEYER,

Special Examiner for Minnesota Insurance Department.

W. K. HEMDON,

Special Examiner for Kansas and Idaho Insurance Departments.

D. L. LAKIN,

Special Examiner, Kansas Insurance Department.

From the records of the meeting of the Board of Directors, March 19, 1918. See Minute Book, Page 206:

The following resolution was offered, seconded and unanimously passed, to-wit:

"Whereas, At a meeting of the stockholders of this corporation held at the Home Office on the 19th day of February, 1918, they unanimously voted to amend the Articles of Incorporation and thereby increase the capital stock of this corporation from \$252,000 to \$1,000,000, and authorized the Board of Directors to issue 7,480 shares of stock of the par value of \$100. each, and said increase, based upon said amendment, was, on the 25th day of February, 1918 approved by the Honorable W. B. Eastham, Insurance Com-

Commissioner of the State of Nebraska, and all the necessary legal steps have been taken providing for such increase, and

"Whereas, The Board of Directors have the power under the Articles of Incorporation, to issued said 7,480 shares of stock upon said terms and conditions as they may deem proper and it is advisable to sell the additional capital stock as quickly as possible and to obtain the proceeds thereof at the earliest possible date, therefore be it

"Resolved, That Messrs. E. R. Gurney and W. O. Van Wyck are hereby given, in consideration of the sum of \$500.00 the sole and exclusive option to purchase for themselves or their order, all or any part of said increased capital stock, consisting of 7,480 shares of the par value of \$100.00 each, at the price of \$145.00 per share paid to this corporation in cash. This option shall expire on October 1st, 1918, and in the event one half of said entire increase is purchased by said E. R. Gurney and W. O. Van Wyck on or before the said date, this option may then be renewed upon said terms as the Board of Directors deem proper.

From records of stockholders January 13, 1919. See Minute book page 225:

Upon motion duly made, seconded and unanimously carried, it is resolved that Article IV of the Articles of Incorporation be amended by striking out all of said Article IV as it now exists and inserting in lieu thereof the following:

Article IV.

"The amount of capital stock of this corporation shall be Six hundred Thousand Dollars, (\$600,000) divided into Six thousand shares (6,000) of the par value of One Hundred Dollars (\$100) each, which, when issued, shall be fully paid and non-assessable."

Statement of Surplus paid to the Lion by E. R. Gurney and W. O. Van Wyck.

Increase of capital stock in 1918 from 2,520 shares to 5,000 shares, net increase of 2,480 shares, at \$45.00 a share, \$111,600.00. See convention form report for 1918 showing payment of this amount, and ledger records of the company.

Increase of capital stock in 1919 from 5,000 shares to 6,000 shares; increase of 1,000 shares at \$45.00 a share equals \$45,000.00. See convention form report for 1919, also ledger records of the company.

Paid by the Bankers Sales Agency March 31, 1919 for the following doubtful assets:

McDonnell Land Company.....	11,557.48
Elby Downward, Collateral loan.....	14,280.07
E. Nebergall, Collateral loan.....	11,157.43
Total	36,994.98

Total amount paid by Bankers Sales Agency to Lion.
See Ledger Records:

June 30, 1919 E. R. Gurney.....	18,000.00
Sept. 30, 1919 E. R. Gurney.....	3,000.00
Sept. 30, 1919 ".....	1,200.00
Dec. 31, 1919 ".....	16,000.00
Dec. 31, 1919 ".....	29,322.03
Dec. 31, 1919 Bankers Sales.....	36,994.93
Total	104,517.01

From the records of Director's meeting May 20, 1919. See Minute Book, page 245:

"Mr. Gurney submitted the report and assignment of the Bankers Sales Agency, and after same had been read by the Secretary, stated that great responsibility regarding the selling of stock had been assumed. He also stated that when the Insurance Examiners saw the assignment they said it was fair and satisfactory and also spoke very well as to how it was handled.

"Upon Motion duly made and carried it was

"Resolved, that the following report and assignment of the Bankers Sales Agency dated May 2nd, 1919 be adopted and accepted and spread upon the minutes of the company and the secretary accept the report and assignment for the company as of May 2nd, 1919.

Report of the Bankers Sales Agency.

May 2nd, 1919.

To the Board of Directors,
Lion Bonding & Surety Co.

GENTLEMEN:

On or about the 19th day of March, 1918 the Lion Bonding & Surety Co., entered into a contract with the undersigned, The Bankers Sales Agency, a co-partnership, the members being W. O. Van Wyck and E. R. Gurney. By the terms of which contract the said Bankers Sales Agency undertook to handle the finances in connection with the increase in capital stock of your company.

It was stipulated in the agreement that the Bankers Sales Agency purchased or were granted option to purchase all of the new
45 issue of capital stock and to pay therefor to the Lion Bonding & Surety Co., the sum of \$145.00 per share. Such price was fixed at \$145.00 on a basis of approximately the book value of the stock of the Lion Bonding & Surety Co., at that time.

Subsequent to the entering into of such an agreement, an agreement was entered into by E. R. Gurney and W. O. Van Wyck to the effect that the said Van Wyck should be compensated by way of a salary during the time of his management of the office of the Bankers Sales Agency and that as a further remuneration the said Van Wyck was to receive a bonus or premium as a special reward for his efforts in the very large undertaking in which he engaged. In pursuance of such an agreement, the said Van Wyck received during the year 1918 the salary agreed upon, to-wit, \$400.00 per

month, and he received approximately \$6,000.00 as a bonus or special compensation above referred to. (It will be noted that Mr. Van Wyck was not during the year 1918 either an officer or a director of the Lion Bonding & Surety Co.) Other than the payment above mentioned and such disbursement as made for current expenses and discount operations, no money has ever been disbursed, and all the funds derived from the sale of stock of the Lion Bonding & Surety Co., over and above such expense items and amounts paid to the Lion Bonding & Surety Co. remain in the possession of the Bankers Sales Agency. The reservations set forth above should also include commissions paid to soliciting agents. It has always been the understanding of the members of the Bankers Sales Agency that they were acting as trustees for the stockholders, and in making effective such intention to present the matter before your body they herewith present an assignment of their net interest in the assets of the Bankers Sales Agency. It is impossible at this moment to give more than an estimate as to the amount of such interest which they are assigning. Careful records have always been kept and a complete exhibit will be made to your body, properly audited, as soon as the transactions involved in the sale of the stock of the Lion Bonding & Surety Co., are finally consummated. Such interest, however, — approximately \$50,000 at this time. This in addition to something over \$37,000 already turned in to the Lion.

Respectfully submitted,

(Signed)

THE BANKERS SALES AGENCY.
E. R. GURNEY.

46

Assignment of the Bankers Sales Agency.

Whereas, The Lion Bonding & Surety Co., on January 14, 1918, voted to increase its capital stock to One Million (\$1,000,000) Dollars, and thereafter the stockholders, by proper amendment to the Articles of Incorporation, actually increased said capital stock to Six Hundred Thousand (600,000) Dollars, and for the purpose of negotiating the sale of stock represented by such increases, granted an option to the Bankers Sales Agency, a partnership consisting of E. R. Gurney and W. O. Van Wyck, whereby said stock was sold to said Bankers Sales Agency for One Hundred Forty Five (\$145.00) Dollars, per share, which said amount was paid to the Lion Bonding & Surety Co., and

Whereas, it was the intention of all the parties to said agreement that the said Bankers Sales Agency should place said stock upon the market, and after paying for such stock and all reasonable and necessary expenses incident to the sale thereof, to return the balances remaining to the Lion Bonding & Surety Co.

Now, therefore, In order that that intent may be affected, the Bankers Sales Agency, hereby assigns to the Lion Bonding & Surety Co., all of its rights, title and interest in and to the assets of said Bankers Sales Agency, subject to the conditions expressed in the preamble hereof, reserving however, the right to handle, manage and control the said assets until all the stock now remaining in its hands,

approximately One Thousand (1,000) shares, has been finally disposed of.

It is the intention of this instrument that until said unsold stock has been sold, the title thereto, is to remain in the Bankers Sales Agency; only the proceeds from said sale, after deducting the price paid for said stock and necessary expenses, is hereby assigned.

In witness Whereof, the Bankers Sales Agency has executed this assignment this 2nd day of May, 1919.

BANKERS SALES AGENCY,
By E. R. GURNEY."

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EXHIBIT B.

Copy.

St. Louis, Mo., August 30, 1920.

Mr. E. R. Gurney,
President Lion Bonding & Surety Co.,
Omaha, Nebr.

DEAR MR. GURNEY:

In re enclosures.

As requested, I enclose you the document submitted by you with confidence. This assignment shows as follows—750 shares of stock of the Independent Quarry & Construction Co.

In according to my understanding these shares are really to be held by your company as collateral in escrow, pending the performance of our contracts for street work, for which the Lion Bonding & Surety Co., are sureties for the Independent Quarry & Construction Company. That when the Independent Quarry & Construction Company have completed contracts and paid back to Lion Bonding & Surety Company, all moneys due them with interest. These same certificates of the Independent Quarry & Construction Co., are to be returned by the Lion Bonding & Surety Co., on demand.

Very respectfully,
(Signed)

G. A. HEMAN.

(Agreement.)

This Agreement, Made this — day of 1918, between the Lion Bonding & Surety Company of Omaha, Nebraska, Independent Quarry & Constr. Co. of St. Louis, Missouri, and G. A. Heman, of said last mentioned city and State, Witnesseth:

Whereas, under contract with the city of St. Louis said Heman is paving Margaretta Ave. in said city from Fair Ave. to Rosebud Ave. and Marcus Ave. from Kingshighway N. E. to Florissant Ave. and the said Surety Co. is the surety on the bond of said Heman

given to the City of St. Louis for the proper performance of said contracts, and is furnishing the money necessary for the prosecution of the work; and

48 Whereas, it is now estimated that some loss will be sustained in the completion of said contracts, and it is desired to arrange for the protection and further indemnity of said Surety Company against such loss; and

Whereas, the said Independent Quarry & Const. Co. is in need of financial aid and the said Heman owns or controls seven hundred fifty shares of its [capitol] of the par value of \$75,000.00, being all of the capital stock of said company that has been issued;

Now, Therefore, in consideration of the foregoing and of the mutual and reciprocal promises hereinafter set forth, it is hereby agreed between the said parties as follows:

Said Surety Company agrees that upon the conditions hereinafter stated it will loan to the said Independent Quarry and Const. Co. money for the following purposes:

To pay such of its present indebtedness as in the opinion of said Surety Company's agent W. M. Smiley should be paid in order that said Quarry Company may continue in business without undue hindrance and annoyance;

To make such repairs, additions and improvements to the plant and machinery and equipment of the said Quarry Company as in the judgment of said Smiley are necessary or expedient in order to put same into usable condition;

To meet such payrolls and other expenses of operation as the said Smiley, in his discretion, deems necessary or expedient to be paid, and which cannot be met from earnings of the said Quarry Company.

The money thus loaned will be advanced from time to time as in judgment of said Smiley it is needed, and for each advance said Quarry Company shall execute its promissory note payable on demand to the order of said Surety Company endorsed by said Heman, and bearing interest from date at 6% per annum.

All funds thus advanced by the said Surety Company shall be disbursed for Quarry Company's account by the said Smiley, or his successor.

It is further agreed that during the life of this contract said Smiley, or his successor, shall have sole management and control of all disbursements of said Independent Quarry & Construction Company; shall have possession and control of, and shall keep all of its books and records; shall have the exclusive right to receive and keep under his control all of its earnings or moneys derived by it from the sale of its product, or from other sources; shall collect all accounts due it and adopt such means to make such collections as to him, in his discretion, may seem advisable. All money thus coming into the hands of said Smiley shall be applied by him, in his discretion, to the payment of the indebtedness of the said Quarry Company; to the expenses of the operation of its quarry and on account of its aforesaid notes.

Said Heman agrees that as further security for the payment of said demand notes thus to be given by said Quarry Company and as additional indemnity against loss on account of said Surety Company having signed, as surety, the said contracts for paving Marcus and Margaretta Aves. he will, contemporaneously with the execution of his agreement, deposit and pledge with said Surety Company seven hundred and fifty shares [od] capital stock of said Independent Quarry & Construction Company, and he hereby represents and warrants that he has full power and authority to make such deposit and pledge; said pledge is made with the agreement and understanding that if default is made by said Quarry Company in the payment of any of its said notes and interest thereon, and said default continue for thirty days after demand for payment is made, or if said Surety Company shall sustain any loss, damage [of] expense by reason of having signed as surety the said bonds of the said G. A. Heman given as aforesaid for the performance of his said contracts with the City of St. Louis, or if the total amount of money advanced by said Surety Company to the said Heman for the prosecution of the work of paving the said streets shall not be realized by said Surety Company from the tax bills issued in payment for said work, and the balance is not paid to said Surety Company by said Heman on [deman-], then said Surety Company shall have the power and right to sell said stock at public sale at the east front door of the Court House in the City of St. Louis upon ten days notice given by publication in some newspaper published in said city, and the said Surety Company shall have the right to bid at such sale. It is understood, however, that if said tax bills are disposed of by said Surety Company at a discount in excess of 3%, said stock shall not be deemed pledged to cover such excess.

The said Heman further agrees that he will use his best efforts to expedite the work and completion of said paving contracts; that he will do all in his power to secure the most favorable terms possible in all settlements with the City of St. Louis, or any of its officers; that he will assist in every way possible in securing the enactment of all relief legislation now pending before, or which may hereafter be requested from the Board of Aldermen of the City of St. Louis providing for the payment to him or to the said Surety Company of money on account of extra work done by him, which is not compensated in tax bills; and which enures to the benefit of said Surety Company; and that he will endeavor in every way possible to protect said Surety Company as his bondsman from loss on the two contracts above mentioned.

The said Surety Company reserves the right to discontinue the advances hereinabove mentioned, at any time they may feel unsafe or insecure, although it is not their intent to make such radical action unless such circumstances appear as make such action necessary, and it is expressly understood that under no circumstances shall the amount advanced exceed the maximum sum of \$10,000.00.

When all the promissory notes executed by the said Independent Quarry and Construction Company under the terms of this contract have been fully paid, and said Surety Company has been fully re-

imbursed for all advances made by it for the prosecution of the work of paving said Margaretta and Marcus Avenues, and has been fully released from all liability upon its bond given to secure the proper performance of said paving contracts, then said Independent Quarry and Construction Company shall be returned to the said G. A. Heman.

It is expressly understood and agreed that nothing herein shall in any wise effect any contract, bond or agreement heretofore made by the parties hereto among themselves or with third persons.

In Witness Whereof the said parties have hereunto set their hands and affixed their seals in duplicate this — day of —, 1919.

_____. [SEAL.]
 _____. [SEAL.]
 _____. [SEAL.]

51 *Résumé and Report on the G. A. Heman Affairs.*

E. H. Luikart,
 General Manager Lion Bonding & Surety Company,
 Omaha, Nebraska.

DEAR SIR:

Since taking charge of [yhe] Claims Department, you have turned over to me for adjustment, the G. A. Heman Matter which has been pending in the office of the Lion Bonding & Surety Company since the summer of 1915, involving paving contracts in the city of Salt Lake City, Utah, and St. Louis, Missouri, awaiting the completion of the St. Louis contracts before final and [complet-] adjustment could be made.

During the period of three years, the files in this case have not been a matter of record in the claims Department, or under the supervision of the Legal Department, but all matters in connection therewith have been handled by Mr. Haubens, formerly president and C. W. Shaffer, formerly Secretary of the Company.

The records in the files of this case, and upon the books of the Company, are very incomplete and disconnected. To arrive at the true status of this case has been and will be, a very difficult task, by reason of the manner in which the records and accounts have been kept pertaining to the [multitudiness] transactions had in connection with the performance of the contracts herein referred to.

With the assistance of Mr. A. C. Leigh, a partial audit of the various transactions has been made from the available records and accounts in this office, and the showing, so far made, indicate that amounts aggregating several thousand of dollars have been misappropriated out of the funds advanced by this company for the completion of these contracts. Gross mismanagement and wasteful expenditure of funds advanced are traceable throughout all of the business transactions connected with the performance of the several contracts involved. As the audit proceeds the amount of funds thus involved increases. Several weeks will be required to complete this

audit before definite totals and transactions can be submitted for further consideration.

After carefully going over the records and accounts in this office, and making two somewhat trips of investigation to St. Louis, I submit the following report as to the present status of the Company's liabilities and its prospective sources of recovery.

52 Before entering upon the details of the financial situation presented by this case, a brief history of how the company became so unfortunately connected with the affairs of G. A. Heman afford a clearer understanding of the discussion of the financial features that follows.

During the course of business, about the year 1914, Mr. Shaffer as Secretary of the Lion Bonding & Surety Co. appointed Alonzo G. Heman as agent for the purpose of endeavoring to secure the contract bond business of the Heman Construction Company, a strong and reputable contracting concern in that city. August Heman, father of Alonzo G. was the owner and manager of the Heman Construction Company. The subject of this report was a cousin to our agent.

During the year, 1914, G. A. Heman secured a paving contract in Salt Lake City, amounting to over \$200,000.00. He made application to this company for the bond required. Instead of executing the bond, Mr. Haubens secured the bond from the National Surety Co. of New York and re-insured that Company's liability.

On March 26th, Heman had given Henry Ruckert, president of the Lafayette Bank of St. Louis, a chattel mortgage on all of his equipment to secure the payment of a note for \$69,920.98.

In May 1915, the National Surety Co. feeling insecure, demanded indemnity. The mortgage to the Lafayette Bank had not been placed on record and the bank consented that a mortgage to the National Surety Company in the sum of \$50,000.00 might be given and have priority over the Ruckert Mortgage. This was done on May 27th, 1915 and recorded in Salt Lake City, June 4th, 1915.

With full knowledge of the existence of these two mortgages; with the work at Salt Lake incomplete and progressing in an unsatisfactory manner; Mr. Haubens, on August 26th, 1915, drew the voucher of this company #10678 for \$7,500.00 and transmitted the same to the Mississippi Valley Trust Co. of St. Louis for deposit to the credit of G. A. Heman and subject to his check for the purpose of enabling him to bid on \$143,000.00 worth of paving contracts in that city.

Heman was the low bidder at the above figure; the bonds of the Lion Bonding & Surety Company were executed guaranteeing the performance of the contracts. The Board of Public Works of the

City of St. Louis refused to approve the "Lion" bonds, because they did not want to award the contract to Heman.

53 For some unexplainable reason, Mr. Shaffer and Mr. Haubens insisted upon the award being made, and in order to compel the city to enter into the contract with Heman, they procured bonds [form] the Massachusetts Bonding Company and the Chicago Bonding Company, by reinsuring the liability in full. These companies

being duly authorized by the city authorities, they were forced to award the contract.

In November, when the contracts approached completion in Salt Lake City the unpaid materials and labor claims aggregated so large an amount that the plant and equipment could not be moved on to the St. Louis work.

Shaffer then assisted Heman in raising \$20,000.00 among friends of Heman, for the purpose of paying off the obligation at Salt Lake City, and transporting the plant and equipment to St. Louis. The adjustments and settlements at Salt Lake City, were made by Mr. Shaffer as the attorney-in-fact of G. A. Heman, but they were made in such a way and gave rise to so many complications that the Lion Bonding & Surety Company was the loser to the extent of \$12,000.00 to \$15,000.00, before the plant and equipment was finally landed in St. Louis and made available for work there. No satisfactory or final accounting has ever been made of the disbursement of the \$20,000.00 above referred to.

The work at St. Louis, owing to the incompetent and unbusiness-like way in which it was handled, has proved far more disastrous to the Company than the Salt Lake City contracts.

After a careful audit of the accounts and making an investigation of conditions at St. Louis, I present the following approximate conditions:

G. A. Heman Contracts.

Liabilities.

Cash Advance on Florrisant Ave. (Balance).....	\$87,918.44
Cash Advance on Marcus and Margaretta Ave.....	39,950.00
Cost to Complete " " " (Estimated).....	2,000.00
Cash Advances Quarry Acc't.....	9,000.00
Total Cash Advanced.....	\$138,868.44
Quarry notes—Manchester Bank.....	26,308.07
Accrued penalties, Marcus & Margaretta (Approximated)	18,000.00
Trackage Rental, asphalt plant.....	1,200.00
Auto Truck damage Judgment, Quarry Co.....	420.00
Total Liabilities	\$184,796.51

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Assets.

Tax Bills, in process of collection, Florrisant.....	\$32,132.00
Tax Bills, Marcus and Margaretta, to be delivered..	30,552.75
Note, L. Schuetz & Wm. Wilkening, due 10/30/18..	5,000.00
Accounts receivable, Quarry about.....	2,000.00
Asphalt Plant & Street equipment.....	25,000.00
Quarry Property, conservative value.....	50,000.00
Deficit	40,111.76
	\$184,796.51

What we hope to secure with the co-operation of Mr. Heman is, as follows:

Passage of Relief now pending.....	\$7,500.00
Removal of Penalties	17,000.00
Allowance of Extras.....	3,500.00
Off set on Trackage Rental.....	1,200.00
Total	<u>\$29,200.00</u>

With the exception of the tax bills on the Florrisant Avenue contract,, amounting to \$32,132.00, which are now with the Franklin National Bank for collection to our credit, the other items listed as Assets are more or less of uncertain value or availability.

The tax bill listed on the Marcus and Margaretta avenue contract, as due upon the completion of those contracts, at \$30,552.75, will be governed in amount by the amount of the accrued penalties that we can get removed.

The note of Louis Schuetz for \$5,000.00 and Wm. Wilkening due October 30th, 1918, with interest at 6 per cent, is a non-negotiable instrument, representing the unpaid balance of a compromise settlement made with those people, as indemnitors for G. A. Heman, on or about April 20th, 1918.

This compromise settlement was made upon the following condition: "It is expressly understood and "agreed that this agreement is based upon the claim and "representation made by the said Bonding Company that the actual loss suffered and resulting to it by virtue of its "connection with said public lettings No. 149, 150, 151, and 160, of the City of St. Louis, Missouri, is not less than \$85,000.00." Said Company hereby warranting the truth of said representation.

Neither the facts as they existed, or the records and accounts of the Home Office would verify or establish such representation and warranty. The records in the Auditing Department on January 1st, 1918, show the net loss to have been \$50,786.44 on that date, and this amount was not materially increased up to the date of the compromise settlement.

The further fact that from \$12,000.00 to \$15,000.00 of the net balance as shown on January 1st, 1918, was the net loss incurred on the Salt Lake City contracts, would make the variance between the warranty referred to and the actual facts much greater and more apparent.

The variation between the actual facts as they existed, and the representation upon which the compromise settlement was based, is so glaring, that it might be made an effectual bar to the collection of the note referred to by process of law.

Listed as one of the principal assets, or security, which we hold as a source of salvage, is the original chattel mortgage given to the National Surety Company of New York on May 27th, 1915, for the sum of \$50,000.00 covering the asphalt plant and street equipment when the same was located at Salt Lake City, Utah. This mortgage

was recorded at Salt Lake City, June 4th, 1915, and in St. Louis April 11th, 1916.

On December 30th, 1915, Wm. Kroeger, Wm. Wilkening and Louis Schuetz of Madison County, Illinois, loaned G. A. Heman the sum of \$20,000.00 for the purpose of paying off the liabilities against the Salt Lake City contracts for which the bond of the National Surety Company was liable in order that the plant and equipment might be shipped to St. Louis.

The mortgage was taken assigned by the National Surety Co. to Wm. Kroeger, Wm. Wilkening and Louis Schuetz as collateral to their loan of \$20,000.00 (See agreement of December 30th, 1915). This assignment was filed of record in St. Louis on January 24th, 1916.

Nowhere in this assignment does the Lion Bonding & Surety Company acquire any right title or interest in said mortgage, nor does the provisions of said mortgage in any way [*incure*] to the benefit of said company.

This mortgage was originally given as an indemnifying instrument to a \$50,000.00 bond given by Heman to the Pingree National Bank of Ogden, Utah, and the National City Bank of Salt Lake City,

Utah, indemnifying said banks against loss by reason of moneys advanced Heman in the performance of his contracts with the city of Salt Lake and is so stated in the mortgage itself.

All of the terms, covenants and conditions of the bond were fulfilled and complied with and said banks were fully reimbursed and paid all moneys advanced with interest, and all liability under the bond was terminated without loss to the National Surety Company. Hence the National Surety Co. had no "right, title and interest" in said mortgages to assign as it was fully satisfied and released according to its own terms and conditions. No part of the \$20,000.00 was used in the discharge of the obligations for which the mortgage was given.

The debt, for which this mortgage was assigned as security, was created seven months after the mortgage in question was executed and for an entirely different purpose than that contemplated in the mortgage. Hence, its value, as security, even to the indemnitors, was of a very doubtful character, and its assignment from them to this company in no way, enhances its validity or confers the right to enforcement. Our right to take possession of the equipment described in this mortgage, and hold the same over the objections of the owners, to my mind, is extremely doubtful.

However, we have, in addition to the assignment referred to, a Chattel mortgage given direct to the Lion Bonding & Surety Co. as security to a demand note of \$10,000.00 dated November 23rd, 1915, and recorded in St. Louis County, December 6th, 1915, covering the same equipment as described in the assigned mortgage. This mortgage is undoubtedly valid as security for the ten thousand dollars and interest.

The question arises, however, that, if possession is sought by foreclosure and sale under this mortgage would be entitled to hold from the proceeds of the sale of said equipment more than the \$10,000.00 with accrued interest and costs.

This question arises from the fact, that the Lafayette National Bank of St. Louis holds an unsatisfied Chattel mortgage, covering this same equipment, as security to a note, or notes, in the amount of \$69,920.98. This note and mortgage bears date of March 26th, 1915, but was not recorded until July 12th, 1917. It was given to Henry Ruckett, formerly president of the bank, and now dead. This bank might attempt to establish a right to the proceeds over and above the expressed consideration named in our mortgage.

57 In checking over this equipment, I discovered that a Koehring Concrete Mixer #22 of a value of about \$3,500.00 and one Auto Truck valued about \$2,000.00, are not covered by any of the several mortgages referred to, but by proper and diplomatic handling of the case, can be secured as additional salvage.

I consider the Quarry property the most stable and reliable source of salvage that we have, if it is properly handled and put upon a substantial business basis. Immediate attention should be given to the adjustment of the Long past due notes, now held by the Manchester Bank. When I first investigated this matter, about June 5th, I found the bank just ready to start foreclosure proceedings under their Trust deed for the nonperformance of promises that had been made them by Mr. Haubens, while President of the Lion Bonding & Surety Co., and only the prompt action taken by me on June 12th prevented, or rather averted, drastic action by the bank at that time.

The condition of the Quarry deal is as follows:

The Manchester Bank sold this quarry to the Independent Quarry & Construction Co. On September 14th, 1916, for the sum of \$36,000.00, \$6,000.00 being paid in cash at time of sale, one note for \$18,000.00 was [given], due in three years from date, interest six percent payable semi-annually, and thirty-two notes of \$375.00 each payable in thirty two consecutive months following September 14th, 1916, interest as above stated. To secure the payment of these notes, A Trust Deed was executed to the Manchester Bank, covering the property and equipment of the Quarry Company.

Up to this time, the indebtedness of \$30,000.00 represented by the Trust Deed has been reduced \$3,691.93, leaving a balance of \$26,308.07. Of this amount \$3,466.98, with interest accruing at eight percent, is past due, from October 14th, 1917, monthly, up to the present date.

Arrangements should be made for the early payment of this past due paper, as an additional two percent interest accrues on these notes after maturity. To do this would require approximately \$4,000.00. With these past due notes taken up, the danger of foreclosure proceedings under the Trust Deed would be averted. The bank is willing to carry a principal \$18,000.00 indefinitely, if desired.

58 About \$1,500.00 more should be expended in stripping two more ledges, which would add greatly to the output of the quarry.

I believe this quarry is capable of being made a very profitable investment, and if properly handled for a few months, can be closed

out to the quarry combine at a figure clear of all obligations, and leave a salvage of from \$10,000.00 to \$20,000.00.

Under the Missouri Statutes governing the creation of domestic corporations, the charter of the Independent Quarry & Construction Company might be open to successful attack upon the grounds of fraud in its organization, for the reason that the property was purchased for the sum of \$36,000.00 and turned over to the incorporation at a value of \$72,500.00. There was said to be \$2,500.00 cash on hand, and these items make up the \$75,000.00 valuation, upon which the 750 shares of stock was issued at a par value of \$100.00 each.

This stock we now hold as collateral only to a loan of \$10,000.00 but without the right to vote the stock. No annual meeting of the Stockholders was held on May 1st, 1918, as provided for in the Articles of Incorporation, and no Board of Directors or officers of the corporation have been elected, as provided for.

When I visited St. Louis, June 5th, a suit had been instituted by the Attorney General to forfeit the Charter of the Independent Quarry & Construction Company because of failure to make the annual reports required by law from foreign and domestic corporations doing business in the State.

I saw to it that the proper reports were made and the suit dismissed, but the fines imposed, costs and attorneys' fees, amounted to about \$150.00.

Other Difficulties Presented.

In addition to the complication already cited there are other serious conditions to be considered and overcome.

One very serious feature is, that we have no signed applications for these various bonds from G. A. Heman, and hence no signed indemnifying agreements conferring upon us, any right of action whatsoever against Heman, or right to hold or dispose of any equipment that might have been used in the performance of the contracts, or any rights of subrogation, so far as he is concerned. Whatever rights we may have are not based upon the rights of a suretyship, acquired at the time the bonds in question were executed, as a consideration.

Our existing rights have been acquired in a loose, slipshod, disjointed manner as the contracts in question progressed from bad to worse.

Heman is inclined to deny responsibility for loss on the Florrisant Avenue contracts for the reason, that they arbitrarily were taken out of his control and completed under the direction and supervision of others.

He charged (and with good grounds and reasons) that the incompetent and unbusiness like manner in which the work was handled, increased the amount of loss unnecessarily to the extent of many thousand of dollars.

It is extremely doubtful in the mind of the writer, if Heman could be legally held liable for the loss as shown, of \$50,786.44 of this con-

tract, for the reasons above stated. The manner in which this work was managed would at least be open to severe and just criticism in determining judically the equities of the parties interested.

The questionable manner in which the \$20,000.00 was disbursed in settlement of claims at Salt Lake City would be very prejudicial to the success of an attempt to enforce recovery of loss in a suit at law.

It has always been contended that we would not be responsible for the acts of Mr. Shaffer in effecting the settlements referred to for the reason, that he was acting under a power of attorney, as the attorney in fact of G. A. Heman, and that the Lion Bonding & Surety Company was not a party to the transactions.

The contract entered between Heman and those indemnitors, on December 30th, 1915 shows, that this Company was the third party to that agreement and was one of the signature parties on the terms of that agreement were repeatedly breached by the Company.

From a careful investigation of all phases of this case, I am of the opinion, that we are not in any position to seek enforcement of our claims by law. Any reasonable compromise settlement that can be secured would serve our interests far better than litigation.

Owing to the indiscreet and ill-advised action of the representatives of this company in the past, I found the Engineering
60 department, and the Board of Public Improvement, for the City of St. Louis, very much prejudiced against the company, and not inclined to listen with favor to our requests for concessions.

However, this has been somewhat overcome, and recently several minor concessions have been secured that materially reduced the cost of completion. If no "monkey wrenches are thrown into the machinery" from now on, we will have a good chance of securing an allowance for "Extras" of from \$3,500.00 to \$5,000.00 on the contracts that are now being completed.

If properly handled there is a fair chance that the relief Bill, now pending before the Board of Alderman, can be passed in September, in such a way that we can realize a net salvage of \$7,500.00 from that source.

This case has approached the stage where it is absolutely necessary that it be placed in the hands of some competent and experienced person for final adjustment and settlement, and whoever be selected for this duty should be given the free exercise of his own judgment and the co-operation and support of the executive officers and the Board of Directors of the Company.

This — a case that requires tact, diplomacy experience, application of sound business [principals], and good judgment. Any attempt to apply litigation and force will result disastrously to the Company's interest and augment the final loss sustained.

Regardless of past experience, personal prejudice, or questions of honesty of purpose, or acts in the past Heman's co-operation and influence with an incentive backed by a restored confidence, is the greatest asset we can obtain toward the successful working out of this complicated problem.

Suggestions as to Procedure.

First. The various angles and interests involved in this matter should be consolidated, or co-ordinated in some way under one central head or organization, the control of which would vest in parties representing the interests of the company.

Second. Endeavors to effect such co-ordination, or consolidation should be made in a way that the various angles of defense, and questions of liability, would be waived, or admitted, and thereby close all fruitful avenues of litigation and misunderstanding; secure
61 peaceful possessions of the equipment and avoid foreclosure proceedings.

Third. The Independent Quarry & Construction Company might afford the medium through which such a proposition could be handled by securing the right to vote the stock which we now hold as collateral security. With the whole deal properly framed up and presented, I think that this concession could be secured from the present holders. If this can be accomplished at an early date, from \$7,000.00 to \$9,000.00 can be realized, from surplus equipment within sixty or ninety days.

Fourth. Enough equipment should be reserved to provide a complete paving and street grading [outfit.] Then a sufficient and earnest spirit of co-operation should be shown by the Company to keep this equipment employed and producing upon small contracts where the danger of loss can be eliminated beyond a question by the "Framed" price at which the work can be secured, and the profits applied to the liquidation of our loss.

This can be done, for the public work in the city of St. Louis is so controlled that the contractors name their own prices, and it is not a matter of open competition.

Heman is sufficiently entrenched that he can participate in advantageous contracts, if he is placed in a position to secure the bonds required. He is agreeable to such a plan, and is perfectly willing that we hold the decision in all cases, and control the receiving and disbursing of the proceeds of all operations of this character.

From what the writer knows of local conditions in St. Louis he is of the firm opinion, that such a plan is both feasible and safe and would result in the recoupment of our entire loss with all interest and expenses within the next two years leaving Heman with his property restored, and a going profitable business at the final outcome.

If such plan, as herein outlined can be consummated, with the present and future interest of the company properly safe guarded, the earnest, hearty and conscientious co-operation of Heman can be secured in the working out of this angle to the ultimate full reimbursement of the company.

We cannot hope to obtain favorable results or gain his confidence and whole-hearted co-operation, by continuing to kick him around like a stray dog, and violating all of our agreements with him, as has been done under the past management of this case.

It is essential that this situation, as outlined, be given prompt consideration, and the attitude and policy of the company

with relation thereto, determined at the earliest possible date. Time is now a vital and valued factor in this matter.

If some feasible, plan along the lines suggested, can be formulated and put into operation at an early date, a very large part of the amount now involved, that would have to appear as an excessive loss in our next annual statement, can be materially reduced, and at least transferred from the loss column to the "Non Admitted Asset" side of the ledger.

Respectfully submitted,

B/L.

Sup't of Claims.

Supplemental Report No. 1.

July 31, 1918.

Mr. E. H. Luikart,
General Manager:

In addition to the general report submitted in connection with the disbursement of the \$20,000.00 in the matter of the Heman contracts at Salt Lake City, there were one or two side issues carried on, in which the Lion Bonding & Surety Co., had no interest, so far as liability as surety was concerned, but these transactions were so intermingled in the handling of the Heman affairs that a substantial loss was sustained by the Company to the apparent financial advantage of the parties handling the deal.

On July 30, 1915, the City Engineer of Salt Lake City ordered certain sidewalk construction known as "Sidewalk Extension No. 177." The contract for this work was awarded to G. A. Heman for the sum of \$3,272.49. So far as the records of this office show, this Company was not surety for Heman on this contract.

It would appear from correspondence that a certain party or parties, connected with the "Lion" in an official capacity did enter into an agreement with Heman to finance this contract, under the name of "Henry Keating," as evidenced by a copy of the contract hereto attached.

63 By reference to the general Report, it will be noted that the sum of \$3,728.34 was taken out of the \$20,000.00 furnished by Heman to pay off his obligation at Salt Lake City to reimburse "Henry Keating" for funds advanced on Sidewalk Extension No. 177.

The attached letter from the auditors of Salt Lake City, shows that on December 15, 1915, a Cash Warrant #5551, payable to "Henry Keating" in the sum of \$387.10, and was endorsed by him for payment. That other warrants amounting to \$2,517.33 were also issued, and were receipted for by C. W. Shaffer, making a total of \$2,904.43.

None of these warrants were ever turned into the Company as a credit to G. A. Heman, or listed among the securities or investments belonging to the Company.

Thus it will be readily seen that from Heman's assets and resources, there was taken the sums of \$3,728.34, and \$2,904.43 a total of

\$6,632.77, for which his account with the Company did not receive credit.

On July 28, 1916, there does, however, appear a credit from "Henry Keating" account of \$2,411.72, which would leave \$4,221.05 of the above amounts unaccounted for, all of which arose from a transaction involving only \$3,272.49 in the first instance. It is evident this \$2,411.72 was an arbitrary amount necessary to the balancing of the Heman account upon the books of the Company and did not represent any legitimate amount due.

It will be noted from the attached agreement, that "Henry Keating" agrees to finance this contract for one-half of the prospective profits. The Lion Bonding & Surety Co., was in no manner obligated, either as surety or by agreement, to finance this operation. Notwithstanding this fact, the records of this office show that on November 20, 1915, this Company's voucher check #11455 was drawn for the sum of \$656.00 payable to the Union Portland Cement Co., of Salt Lake City in payment of sight draft drawn on "Henry Haubens" for cement used in the construction of "Sidewalk Extension No. 177." (See correspondence and notations of Haubens and Shaffer hereto attached.) This, added to the deficit of \$4,221.05 already shown, makes a total deficit in this one transaction of \$4,877.05.

It is well to state in this connection that Mr. Henry Keating, who at that time was one of the directors of the company, had no knowledge of the financial transactions in which the mythical "Henry Keating" was engaged.

Regarding the item of "Paving Extension #113" mentioned in the agreement between G. A. Heman and "Henry Keating," from the records available, it would appear that so far as this contract progressed under Mr. Heman's management, it was financed from the funds of the Lion Bonding & Surety Co., instead of from funds furnished by "Henry Keating" under the agreement referred to.

This contract, "Paving Extension #113," was a small paving contract involving a little less than \$10,000.00 which could not be completed during the season of 1915, and was finally sublet to P. J. Moran, a local contractor at Salt Lake City, for completion. There is nothing in the records of this office to indicate that the "Lion" had assumed the liability of suretyship on this contract.

You will note from the attached copy of agreement that "Henry Keating" agreed to finance this job also in consideration of receiving one-half of the net profits.

Notwithstanding this fact, at the time this contract was sublet, the Lion Bonding & Surety Co., had advanced \$1,576.30 to meet payrolls and expenses on the work.

Mr. Heman asserts that P. J. Moran offered to refund the [money] expended, pay him a bonus of \$500.00 and take the contract off his hands and complete it, if he (Heman) would ship his equipment to St. Louis and withdraw from the paving game in Salt Lake City.

Certain correspondence found in the files of this case, would indicate that negotiations were pending with Moran for the taking over and completing of this contract upon the basis of \$2,000.00

consideration. The contract was later sublet to P. J. Moran, by Mr. Shaffer and a draft was drawn for \$200.00 and reported as having been paid to Moran to induce him to take this contract over and complete it. In this deal the Company is very evidently out at least \$1,776.30 and every circumstance of which I have been able to get information, would indicate that the amount might be \$2,200.00.

Another charge also appears as follows: W. W. Holmes, Attorney opinion on "Keating" warrants \$5.00.

65 From the records available, it would appear that in these two transactions the Lion Bonding & Surety Co., has been the loser in the following amounts:

Sidewalk Extension #17.....	4,877.05
W. W. Holmes, opinion Keating warrant.....	5.00
Paving Extension #113.....	1,776.30
Total	6,658.35
Deficit shown on general report.....	1,752.81
Total Deficit.....	8,411.16

From certain correspondence under date of August 12, 1916, it would appear that "Henry Keating" did mail Heman a check for \$3,000.00 which would leave a net shortage of \$5,411.16 in connection with the financial transaction at Salt Lake City which amount the Lion Bonding & Surety Co., lost.

There are a number of other transactions in connection with this Salt Lake City deal that present a very suspicious appearance, but which cannot be successfully audited without a personal investigation.

I would suggest that it might be well for Mr. Heman and myself to visit Salt Lake City and make a personal investigation and audit of a number of transactions that were had, which involved several thousands of dollars.

Respectfully submitted,

Supt. Claim Department.

Supplement- Report No. 2.

Aug. 1, 1918.

Mr. E. H. Luikart ,
General Manager:

In my resume and report on the Heman contracts at St. Louis, it will be noted that while the trouble at Salt Lake City was accruing and being adjusted, Mr. Haubens drew from the funds of the Lion Bonding & Surety Co. the sum of \$7,500.00 and deposited to the credit and subject to the check of G. A. Heman, and in the Mississippi Valley Trust Co. at St. Louis to enable him (Heman) to bid upon \$143,000.00 worth of paving in that city.

66 These contracts now present an unparalleled incident in the history of surety underwriting, where a contract taken at a fair price resulted in its completion in a hundred per cent loss to the contractor, his surety and his indemnitors.

The transaction of financing and completing of these contracts were also handled by Mr. Haubens and Mr. Shaffer, with even more disastrous results to the Lion Bonding & Surety Co. than that experienced at Salt Lake City.

In the course of their system of high finance, eight drafts were drawn upon the "Lion" by William Kroeger through the First National Bank of Edwardsville, Illinois, and each of these drafts were presented for payment by the First National Bank of this city. In payment of each of these eight drafts, a voucher check was drawn for the sum of \$10,000.00. When these voucher checks were presented at the collection window, a cashier's check for the sum of \$200.00 was issued, payable to the Lion Bonding & Surety Co. and delivered to the person presenting the voucher check for \$10,000.00.

Each of these checks was endorsed "Pay to the order of Henry Haubens, Trustee," and by him deposited to the credit of the "Henry Haubens Trustee," in his account at the State Bank of Omaha.

Attached hereto is a list of seven of these checks showing the endorsement of each, and corresponding credits can be quite accurately traced upon the statement of this account from the State Bank of Omaha, which is also attached hereto.

It would appear that when the first draft was drawn that the 2% commission was overlooked by the transmitting in its instructions. This had to be paid in full. But attached hereto is a carbon of a letter which shows that a sight draft for \$200.00 was immediately made to correct the error, and it is fair to presume that the proceeds of this draft found their way into the same account.

One thing is sure, and that is, the Lion Bonding & Surety Co. never benefited by these amounts. Heman was charged with the full \$10,000.00 and interest, and afterwards was charged with this 2% commission additional.

These transactions show proof positive of the diverting of \$1,600.00 wrongfully from the funds of the Company.

67 An examination of the real estate loans made, shows that quite a large number of loans were made upon a first mortgage and note bearing 6% interest, and a second note and mortgage was given, equal to 2% on the amount of the loan. The proceeds of this 2% commission were not credited to the interest earnings of the Company, but were deposited to the credit of "Henry Haubens, Trustee." The funds and securities in this account were never treated as assets of the Company.

The exact amount of funds thus diverted from the Company, has not yet been fully determined, as the audit has not been completed. But it is safe to say that it will aggregate quite a large amount.

It will take time to fully determine the exact amount of money that has been lost to the company through methods referred to,

and other sources that as yet have not been investigated for lack of time.

Respectfully submitted,

Supt. Claims Dept.

EXHIBIT B.

Copy.

Independent Quarry & Construction Co.

Paving Contractors.

Building Rock and Crushed Stone.

Office and Quarry Euclide and Ashland Avenues.

St. Louis, Mo., March 11, 1921.

Basis of Adjustment Between Lion Bonding & Surety Co. and G. A. Heman.

1. Lion Bonding & Surety Co. to direct its agent, Ward M. Smiley to execute quit claim deed to Heman homestead in favor of G. A. Heman.

2. Lion Bonding & Surety Co. to execute an option running exclusively to G. A. Heman to repurchase all of the capital stock of the Independent Quarry & Construction Co. on the basis of \$90,000.00 on January 31, 1921 with interest at the rate of six per cent per annum.

3. G. A. Heman to execute release and disclaim to ownership to all shares of stock of the Independent Quarry & Construction Co., and to ratify and confirm a previous assignment dated June 29, 1920.

4. Witness the hands of the parties hereto this 11th day of March, 1921.

LION BONDING & SURETY CO.,
By E. R. GURNEY,
Pres.
G. A. HEMAN.

(EXHIBIT C.)

Recapitulation of Premiums in Force and Unearned Premium Reserve.

	Total premiums.	Total unearned premiums, pro rata.
Accident and Health	176,082.80	77,827.00
Liability	265,426.45	132,420.25
Fidelity	130,898.22	71,695.94
Surety	303,658.85	126,069.15
Plate Glass	651,108.23	327,502.83
Burglary	38,087.86	24,390.74
Automobile Fire	69,714.22	31,077.56
" Tornado	262.21	106.52
" Theft	81,208.68	36,584.44
" Collision	152,098.62	78,961.18
" Property Damage	80,287.35	39,477.54
" Embezzlement Bonds ...	1,231.20	540.32
	<u>\$1,950,064.69</u>	<u>\$946,653.45</u>

(EXHIBIT D.)

February 21st, 1921.

List of Securities Deposited with State of Idaho by Lion Bonding and Surety Company of Omaha, Nebraska.

	No. of warrant.	Amount.	Dated.
Village of Polk Nebr.....	97	\$1,000.00	Sept. 8, 1920.
" " " " 	98	1,000.00	" 8, 1920.
" " " " 	99	1,000.00	" 8, 1920.
" " " " 	100	1,000.00	" 8, 1920.
" " " " 	101	1,000.00	" 8, 1920.
" " " " 	130	592.13	" 8, 1920.
City of Nebraska City.....	3	500.00	June 21, 1920.
" " " " 	2	500.00	" 21, 1920.
" " " " 	15	500.00	" 21, 1920.
" " " " 	16	500.00	" 21, 1920.
" " " " 	19	779.88	" 21, 1920.

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Sac County Iowa Drainage....	2992	2,232.70	Oct. 2, 1920.
" " " " 	2801	1,299.84	Dec. 2, 1920.
" " " " 	2721	2,228.56	Oct. 2, 1920.
" " " " 	2900	1,434.63	June 2, 1920.
" " " " 	2707	650.90	Sept. 2, 1919.
" " " " 	2905	2,634.37	July 1, 1920.
" " " " 	2764	2,228.75	Nov. 5, 1919.
" " " " 	2985	2,215.43	Sept. 2, 1920.
" " " " 	2959	2,408.32	Aug. 5, 1920.

Total \$25,705.51

"E."

(Affidavit of John W. Baker.)

STATE OF TEXAS,

County of Travis, ss:

I, John W. Baker, Treasurer of the State of Texas, do hereby certify that the Lion Bonding and Surety Company of Omaha, Nebraska have on deposit with this department acceptable securities in the sum of fifty thousand (\$50,000.00) Dollars.

In testimony whereof witness my hand and official seal of office at Austin, Texas, on this the 25th day of February, A. D. 1921.

[SEAL.]

(JOHN W. BAKER,)

State Treasurer.

"F."

(Certificate of A. C. Barber.)

State of Oregon,

Department of Insurance,

Salem.

I, A. C. Barber, Insurance Commissioner of the State of Oregon, do hereby certify:

That the Lion Bonding & Surety Company of Omaha, Nebraska, has on deposit with the State Treasurer of the State of Oregon, the following securities:

#298, Thos. D. Thomas, mortgage, note, with coupons, \$10,000.00.

Such mortgage is held as protection to citizens of this state on account of outstanding bonds executed by the above mentioned company and is regarded as a special deposit held for the exclusive benefit of citizens of this state.

70 In witness whereof, I have hereunto set my hand and af-ixed the seal of the Department of Insurance of the State of Oregon, this 21st day of February, A. D. 1921.

[SEAL.]

A. C. BARBER,

Insurance Commissioner.

(EXHIBIT G.)

General Contracting Equipment, Property of Lion Bonding & Surety Co.

Property at Lake Crystal, Minn.:

1 Economy Excavator.....	5,000.00
1 Ford Truck (new)	600.00
1 Sand Pump and Engine	350.00
Camp Equipment	1,000.00
Curbing, small tools, etc.....	500.00

7,450.00

Property at Marshall, Minn.:

1 Sand Pump and Engine.....	350.00	
Camp Equipment	350.00	
Curbing, small tools, etc.....	300.00	
	<hr/>	1,000.00
Oil Well rig at Cambridge, Nebr.		3,000.00
Bay City drag line at La Sueur Center, Minn. (Formerly property of Central Constr. Co.)		5,000.00
Bay City drag line at Elk River, Minn. (Formerly property of James Corr)		5,000.00
Monighan Walin drag line at Harlan, Iowa (Possession by Attachment)		10,000.00

Property on Ditch #30 Franklin County, Iowa:

5 Camp houses on wheels.....	2,500.00	
Curbing and other equipment.....	1,500.00	
	<hr/>	4,000.00

Property on Chris. Godfredson contract, Ditches
1-22, Grafton, Iowa:

2 Cabins on wheels	600.00	
Other equipment	200.00	
	<hr/>	800.00
Property on Winnebago County, Ditch #60.....		200.00
Property on Howard County Ditch #2.....		200.00

Total \$36,650.00

PHIL L. ROUSE,
Construction Engineer.

In addition to the above we have one new Bay City land dredge taken by assignment of Bay City Dredge Company and Smith & Dryer Dredging Co. to protect us until completion of contract, title to return to Smith & Dryer on completion of contract, \$7,500.00.

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EXHIBIT H.

First National Bank, Carroll, Nebraska.

Draft Dr. bank.

Cr. bank.

11/ 1.	\$2,000.00✓	11/ 3. Ck.....	1,000.00✓
11/ 5.	1,000.00✓	11/ 4.	1,000.00✓
11/ 5.	1,000.00✓	11/ 6.	1,500.00✓
11/ 8.	1,500.00✓	11/12.	1,000.00✓
11/13.	1,000.00✓	11/12.	1,000.00✓
11/15.	1,000.00✓	11/13.	1,000.00✓
11/15.	1,000.00✓	11/17.	1,000.00✓

Draft Dr. bank.		Cr. bank.	
11/18.	1,000.00✓	11/23.	1,000.00✓
11/26.	1,000.00✓	11/30.	1,000.00✓
11/29.	1,500.00✓		
11/30.	1,000.00✓	12/ 9.	1,000.00✓
		12/10.	2,000.00✓
12/ 1.	1,000.00✓	12/16.	1,500.00✓
12/ 2.	1,000.00✓	12/21.	1,500.00✓
12/ 2.	1,000.00✓	12/23.	1,000.00✓
12/11.	\$1,000.00✓	12/28.	1,500.00✓
12/11.	2,000.00✓	12/29.	1,000.00✓
12/17.	1,500.00✓	12/30.	1,000.00✓
12/20.	1,000.00✓	12/28.	4,000.00✓
12/24.	1,000.00✓		
12/24.	1,500.00✓	1/ 6.	2,000.00✓
12/29.	1,000.00✓	1/ 7.	1,000.00✓
12/29.	1,500.00✓	1/ 8.	750.00✓
		1/ 8.	1,500.00✓
1/ 3.	1,000.00✓	1/11.	2,500.00✓
1/ 5.	4,000.00✓	1/13.	1,000.00✓
1/ 7.	2,000.00✓	1/18.	1,500.00✓
1/ 8.	\$1,000.00✓	1/18.	1,000.00✓
1/ 7.	1,500.00✓	1/20.	2,000.00✓
1/10.	750.00✓	1/20.	2,500.00✓
1/13.	1,500.00✓	1/21.	2,500.00✓
1/13.	2,500.00✓	1/25.	2,500.00✓
1/14.	1,000.00✓	1/26.	2,000.00✓
1/17.	2,000.00✓	1/27.	4,500.00✓
1/19.	2,500.00✓	1/28.	1,500.00✓
1/22.	2,500.00✓	1/29.	2,000.00✓
1/22.	2,000.00✓	1/29.	1,000.00✓
1/24.	2,500.00✓		
1/24.	1,000.00✓	2/ 1.	4,000.00✓
1/25.	2,000.00✓	2/ 2.	3,000.00✓
1/26.	2,500.00✓	2/ 5.	3,000.00✓
1/27.	2,000.00✓	2/ 5.	3,500.00✓
1/27.	1,000.00✓	2/ 7.	1,500.00✓
1/28.	2,000.00✓	2/ 9.	500.00✓
1/28.	2,500.00✓	2/ 9.	500.00✓
1/29.	1,500.00✓	2/10.	3,000.00✓
1/29.	2,000.00✓	2/11.	1,500.00✓
1/31.	3,000.00✓	2/11.	3,500.00✓
2/ 2.	4,000.00✓	2/15.	3,500.00✓

2/ 2.	2,000.00✓	2/15.	5,000.00✓
2/ 3.	1,500.00✓	2/16.	500.00✓
2/ 3.	1,500.00✓	2/18.	2,000.00✓
2/ 8.	3,000.00✓	2/19.	3,000.00✓
2/ 8.	3,500.00✓	2/23.	2,000.00✓

Draft Dr. bank.		Cr. bank.	
2/ 8.	1,500.00✓	2/24.	2,000.00✓
2/10.	500.00✓		
2/11.	3,000.00✓		97,750.00✓
2/11.	500.00✓		
2/12.	1,500.00✓		
2/12.	3,500.00✓		
2/17.	2,000.00✓		
2/17.	3,000.00✓		
2/19.	2,000.00✓		
2/22.	2,000.00✓		
2/22.	1,000.00✓		
	<u>109,750.00✓</u>		

Gurney Seed Company, Yankton, So. Dak.

Dr. Gurney Seed Co.		Cr. Gurney Seed Co.	
1/24.	\$2,000.00✓	1/26.	\$2,700.00✓
1/27.	1,000.00✓	1/31.	2,500.00✓
1/29.	1,500.00✓	2/25.	1,000.00✓
2/14.	2,000.00✓	3/ 5.	2,500.00✓
1/26.	700.00✓		
2/25.	2,500.00✓		
	<u>\$9,700.00✓</u>		<u>\$8,700.00✓</u>

(Certificate of J. E. Hart.)

State of Nebraska,
Department of Trade and Commerce,
Bureau of Insurance.

Lincoln, Nebraska, February 21, 1921.

I, J. E. Hart, do hereby certify that I am Secretary of the Department of Trade and Commerce of the State of Nebraska and that the Lion Bonding and Surety Company, a corporation chartered by the State and located at Omaha, Nebraska, has made with this department the deposit required by the laws of this State, in securities amounting at market value to the sum of \$256,900.00; that said deposit consists of securities of the class contemplated and permitted by said law, and that I am satisfied such securities are worth not less than \$256,900.00.

73 In testimony whereof, I hereunto subscribe my name and
above written. affix the seal of my office, at Lincoln the day and year first

[SEAL.]

J. E. HART,
Secretary of the Department of Trade and Commerce.

Attest:

W. B. YOUNG,
Chief of the Bureau of Insurance.

Endorsed: 183-67. Department of Trade and Commerce. State of Nebraska vs. The Lion Bonding and Surety Company, a corporation. Petition. Clarence A. Davis, Attorney General and T. J. McGuire, Asst. Attorney General. 5.50. Filed in District Court, Douglas County, Nebraska, Apr. 12, 1921. Robert Smith, Clerk.

Answer.

In the District Court of Douglas County, Nebraska.

Doc. —, No. —.

DEPARTMENT OF TRADE AND COMMERCE OF THE STATE OF NEBRASKA,
Plaintiff,

vs.

LION BONDING & SURETY COMPANY, a Corporation, Defendant.

Comes the defendant, The Lion Bonding and Surety Company, and to the petition of the plaintiff makes the following answer:

I.

Defendant admits the allegations of plaintiff's petition, except paragraph five thereof.

II.

Further answering, the defendant assents to the appointment of the Department of Trade and Commerce to take charge of its business for the purposes set forth in the plaintiff's petition, and shows to the Court that it is to the best interest of the defendant company and of the policyholders, creditors and stockholders thereof, that the conduct of the business of the said defendant company be placed in the hands of the Department of Trade and Commerce as prayed for in the plaintiff's petition.

Wherefore the defendant joins plaintiff in asking that the prayer of plaintiff's petition herein be granted and that the Department of Trade and Commerce be placed in control of the company pursuant to the provisions of the resolution of the Board of Directors attached hereto and marked Exhibit A.

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LION BONDING AND SURETY COMPANY,
By E. P. McDONALD,
Attorney for Defendant.

STATE OF NEBRASKA,
County of Douglas, ss:

E. P. McDonald, being first duly sworn, on oath deposes and says that he is attorney for the defendant in the above entitled action; that he has read the foregoing answer to the petition of the plaintiff and that the facts therein stated are true, as he verily believes.

E. P. McDONALD.

Subscribed in my presence and sworn to before me this 12" day of April 1921.

[SEAL.]

C. C. BRANT,
Notary Public.

EXHIBIT "A."

Special Meeting of the Board of Directors for the purpose of determining the course of procedure to be pursued with reference to the contemplated action of the Department of Trade and Commerce to take possession of and administer the affairs of the Company:

There were present: E. R. Gurney, E. P. McDonald, Phil Kohl, H. C. Leigh, U. S. Conn, C. E. Negus.

The following resolution was moved by H. C. Leigh and seconded by E. P. McDonald:

Whereas The Department of Trade and Commerce of the State of Nebraska is about to file a petition in the District Court of Douglas County, the purpose of which petition is to place the Department of Trade and Commerce in absolute control of this company either for the temporary administration of its affairs under Section 3147, Article 3, Title 5, Chapter 190 of the Session Laws of 1919, or for the purpose of liquidating and winding up the affairs of the company in accordance with the above said section, and

75 Whereas it is the desire of this Board that the company cooperate with the Department of Trade and Commerce in any and all things whereby the affairs of the company may be either supervised or in the event that the Department of Trade and Commerce deems necessary, liquidated and wound up the affairs of the company now, therefore:

Be It Resolved that E. P. McDonald, the General Attorney of the Company be authorized and instructed to cooperate with the Department of Trade and Commerce in any and all things necessary to properly place the Department of Trade and Commerce in the full possession of the company or any and all of its assets, and to make any and all agreements necessary for the carrying out of the above purpose, and to file any and all pleadings in the District Court of Douglas County, Nebraska, or elsewhere, in answer to the above said petition or any other petition or pleading that may be filed by said department necessary to fully and completely enable the Department of Trade and Commerce under the above Section 3147 either to temporarily administer or to liquidate and wind up its affairs as in the judgment of the Department may seem proper.

CHAS. C. BRENT,
Secretary.

E. R. GURNEY,
President and Chairman.

Endorsed: Doc. 183. No. 67. In the District Court of Douglas County, Nebraska. Department of Trade and Commerce of the State of Nebraska, Plaintiff, vs. Lion Bonding & Surety Company, a corporation, Defendant. Answer. 250. E. P. McDonald, Attorney for Defendant. Filed in District Court, Douglas County, Nebraska, Apr. 12, 1921. Robert Smith, Clerk.

Afterward, at the February 1921 Term of said Court, and on the 12th day of April, 1921, an Order was entered herein, as appears on Page 615, Journal 185, as follows, to-wit:

Order.

183-67.

THE DEPARTMENT OF TRADE AND COMMERCE OF THE STATE OF NEBRASKA, Plaintiff,

vs.

THE LION BONDING & SURETY COMPANY, a Corporation, Defendant.

This matter now coming on for hearing before this Court upon the petition filed herein by the above named plaintiff, the Department of Trade and Commerce of the State of Nebraska, alleging that, after an examination of the defendant herein, the Lion Bonding & Surety Company, a corporation, said Company was found to be in such a condition that its further transaction of business would be hazardous to its policyholders, its creditors, its stockholders, and to the public, and alleging other violations of law by said defendant company, more specifically set out in the plaintiff's petition herein, and praying for an order by this Court directing the Department of Trade and Commerce of the State of Nebraska to take possession of the property, records and effects and conduct the business of said defendant Company until such time as after a hearing it shall appear to the Court that the cause of the order directing the Department of Trade and Commerce to take possession has been removed, and that the company can properly resume possession of its property, records, and effects, and the conduct of its business, and it appearing to the Court that the defendant herein has received notice of the hearing in accordance with the law; and it further appearing to the Court that the defendants herein are present in Court by its officers and counsel; and the evidence being adduced, and the Court being fully advised finds:

That the allegations of the plaintiff's petition herein are true and correct; that the condition of the defendant company is such that its further transaction would be hazardous to its policyholders, its creditors, its stockholders, and to the public.

It is therefore ordered, adjudged and decreed that the plaintiff herein, the Department of Trade and Commerce of the State of Nebraska, shall and is hereby ordered to take possession forthwith of the property, records and effects and conduct the business of the de-

defendant company, the Lion Bonding & Surety Company, and retain such possession and conduct the business of said company until such time as, after a hearing, it shall appear to the Court that the cause of this order has been removed and that the company can properly resume possession of its property, record and effects, and the conduct of its business; and it is further ordered, adjudged and decreed that the Defendant Company, its officers, directors, stockholders, and employees, be, and are hereby enjoined and restrained from in any manner interfering with the said Department of Trade and Commerce of the State of Nebraska in the carrying out of this order and in the taking possession of the property, records and effects, and in the conduct of the business of the defendant company, the Lion Bonding and Surety Company.

Signed this 12th day of April, 1921.

By the Court,

ARTHUR C. WAKELEY,
Judge.

THE STATE OF NEBRASKA,
County of Douglas, ss:

I, Robert Smith, Clerk of the District Court, in and for Douglas County, Nebraska, do hereby certify that the foregoing is a full and true Transcript of the proceedings and record had in the cause in the District Court, containing the Petition, Answer and Order in the case of The Department of Trade and Commerce of the State of Nebraska against the Lion Bonding & Surety Company, a Corporation appearing of record in said court.

In witness whereof, I have set my hand and affixed the seal of said Court at Omaha, this 13th day of May, A. D. 1921.

[SEAL.]

ROBERT SMITH,
Clerk.

THE STATE OF NEBRASKA,
County of Douglas, ss:

I, A. C. Troup one of the Judges and the Presiding Judge of the District Court of the Fourth Judicial District of the State of Nebraska, do hereby certify that Robert Smith, who signed the above certificate was, at the time of signing same, and is now, Clerk of the said District Court, in and for Douglas County in the Fourth Judicial District of said Court, duly elected, commissioned and qualified; that said Court is a Court of Record; that the said Clerk has by law the custody of the records and the seal of said Court.

That said attestation is in due form and by the proper officer according to the laws of the State of Nebraska, and that the above signature of said Clerk is genuine.

Witness my hand at Omaha, County and State aforesaid this 13 day of May, A. D. 1921.

A. C. TROUP,
Judge.

78 STATE OF NEBRASKA,
County of Douglas, ss:

I, Robert Smith, Clerk of the District Court in and for Douglas County, in the Fourth Judicial District of the State of Nebraska, said Court being a Court of Record, do hereby certify that the Honorable A. A. Troup whose name is subscribed to the annexed and foregoing certificate was at the time of the signing thereof, and now is one of the Judges of said District Court, duly elected, commissioned and qualified, and that the said signature is genuine.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said Court, at my office in the City of Omaha, in said Douglas County, State of Nebraska, this 13th day of May, A. D. 1921.

[SEAL.]

ROBERT SMITH,
Clerk.

Endorsed: Filed in the District Court on May 16, 1921.

(Report of Receivers of Lion Bonding & Surety Co.)

In the United States District Court, District of Minnesota, Fourth Division.

A. H. KARATZ, Complainant,

vs.

LION BONDING & SURETY COMPANY, a Corporation, Defendant.

The receivers appointed by the Court in this suit respectfully report to the Court that they have duly qualified in accordance with the order of the Court, and have entered upon the discharge of their duties as receivers of the above-named defendant.

That upon the 3rd day of May, 1921, they proceeded to the city of Omaha, Nebraska, where the general offices of the defendant company are located, and where also is located a very considerable part of its property, for the purpose of taking possession of the property and assets of the defendant company, and to that end at 9.30 A. M. on that day, they presented to the Judge of the District Court of the United States for the District of Nebraska, Omaha Division, their verified complaint in all respects similar to the complaint filed by them in this Court and upon which their appointment as receivers was made, but also containing a proper allegation reciting the order of this Court appointing them as such receivers, and thereupon applying to that Court for an ancillary order appointing them as receivers of the defendant corporation in that jurisdiction.

That the Honorable J. W. Woodrough, United States District Judge, sitting at Omaha, to whom said application was made, directed that informal notice of the application be given to the defendants and that the matter be further heard before him at two

o'clock in the afternoon of that day, and such notice being served upon the proper officer of the company in accordance with such direction, the matter was further heard before Judge Woodrough at the time indicated. On this hearing Amos Thomas, Esq., and other counsel appeared as the representatives of the Department of Trade & Commerce Bureau of Insurance of the State of Nebraska. The Court thereupon stated that his attention had been called to the fact that a petition had been presented by the Department of Trade & Commerce of the State of Nebraska to the District Court of the State of Nebraska in and for the County of Douglas in a proceeding instituted under the provisions of Section 3147, Laws of Nebraska 1919, a copy of which statute is presented by the receivers to this Court as a part of the report herein, and an answer filed by the defendant company in that proceeding, admitting the allegations contained in the petition and praying that it be granted and that the Department of Trade & Commerce be placed in control of the company; that thereupon the State Court on April 12, 1921, made its order directing the Department of Trade and Commerce of the State of Nebraska to take possession of the property, records and business of the defendant company and retain such possession and conduct the business of the company until such time after hearing as it shall appear to the Court that the cause upon which the order was made has been renewed and that the company can properly resume possession of its property, records and effects and continue the conduct of its business.

A copy of the petition, of the answer, and of the order in the proceedings in the District Court of the State of Nebraska above referred is hereto attached and made a part of this report.

Your receivers further report to the Court that the defendant company at the time its properties were taken over by the Department of Trade and Commerce of the State of Nebraska was doing business in nineteen different states of the Union, and that it now has property, assets and credits in each and all of these various states; that from the information which they have been able to gather, the defendant company is wholly insolvent and will never be able to resume the conduct of its business.

Your receivers further report that the Insurance Commissioner of the State of Minnesota recently made an examination of the affairs of this defendant company, and found it to be insolvent and cancelled its license to do business in this state.

Your receivers are informed by the representatives of the Minnesota Commission that the examination disclosed that fully one-third of all of the business written by this defendant company was written in the State of Minnesota, and that fully one-third of all of its present liabilities are due and owing to citizens of the State of Minnesota.

Your receivers further report that upon consideration of the circumstances hereinbefore set forth, Judge Woodrough made an order directing your receivers to present to this Court a full showing pursuant to the orders of that Court, and in furtherance of that order this report is made.

Your receivers further report that from such information as they have been able to gather, the defendant company is in default in the payment of at least Four Hundred Thousand Dollars (\$400,000.00) in past due obligations of various kinds which it has been unable to meet; that its totaled estimated assets amount in round numbers to One Million Dollars (\$1,000,000.00), but included in this is substantially Nine Hundred Thousand Dollars (\$900,000.00) of unearned premiums on outstanding policy obligations; that among its other assets are mortgages on property situate, some of it in Nebraska, some in Missouri and some in Minnesota, and some in other states, the details of which your receivers are unable at the present time to give.

Your receivers further report that the defendant company has been excluded from conducting its business in all or substantially all of the states in which it has been doing business, and that it is not writing any new insurance anywhere.

Respectfully submitted,

LION BONDING & SURETY COMPANY.

A. J. HERTZ AND

JOHN I. LEVIN,

Receivers,

By JOHN I. LEVIN.

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Petition.

In the District Court of Douglas County, Nebraska.

THE DEPARTMENT OF TRADE AND COMMERCE OF THE STATE OF
NEBRASKA, Plaintiff,

vs.

THE LION BONDING & SURETY COMPANY, a Corporation, Defendant.

Comes now the Department of Trade and Commerce of the State of Nebraska, by J. E. Hart, the duly appointed, qualified and acting Secretary, and sheweth to the Court:

I.

The defendant, the Lion Bonding and Surety Company, is a corporation, duly organized and existing under the laws of the State of Nebraska, organized for the purpose of transacting a general fidelity surety, plate glass and burglary insurance business, under the laws of the State of Nebraska, and licensed by the Bureau of Insurance of the Department of Trade and Commerce of the State of Nebraska to conduct such insurance business and has been such corporation since October 11th, 1907, and has been so licensed since on or about November 1st, 1907.

II.

That during the months of January, February and March, 1921, under and by virtue of the authority vested in it by the law, the

Bureau of Insurance of the Department of Trade and Commerce of the State of Nebraska caused an examination to be made of the said Lion Bonding & Surety Company, by its regularly appointed, qualified and acting examiner, Fred C. Bailey, who was assisted in said examination by duly qualified and acting examiner representing the Insurance Departments of the State of Iowa, Minnesota, Kansas and Idaho, and that said Examiner compiled a report, showing the result of said examination and his findings and recommendations in regard thereto, which said report was filed as a part of the official records of the Bureau of Insurance of the State of Nebraska on the 4th day of April, 1921, a certified copy of which report is attached hereto, marked "Exhibit A", and made a part of this petition, the same as if set out in full in this pleading.

III.

That by and after such examination the said Lion Bonding & Surety Company was found to be, and is in such a condition that its further transaction of business would be hazardous to its policy holders, its stockholders, its creditors, and the public, in that the surplus of said Lion Bonding & Surety Company has been dissipated and reduced; that its capital stock and surplus are entirely dissipated and gone, and that a computation of its assets and liabilities made according to the Insurance Laws of the State of Nebraska, show that such company is now without a capital and surplus; that the company is insolvent, and unable to pay its claims, or to meet its liabilities to creditors or stockholders. That the true financial condition of said company is set out more fully on page 10 and 11 of Exhibit "A", attached hereto.

IV.

That said corporation has willfully violated the laws of the State of Nebraska in that it has accepted, as part of its assets, bonds and notes, secured by first mortgages on real estate in this and other states of the United States, which were not worth, with improvements thereon, at least, double the sum loaned thereon, as required by law, and as set out more fully in the report attached hereto, marked "Exhibit A", pages thirteen and fourteen.

V.

That said Company has wilfully violated the laws of the State of Nebraska, and has been conducting its business in an unsafe and unauthorized manner, in that it has made a practice of drawing drafts or bills of exchange upon Banks in which it had no proper credit, or in honoring drafts or bills of exchange from banks who had no credit with the company, which practice is commonly known as "kiting of drafts". These transactions have taken place in conjunction with the First National Bank of Carroll, Nebraska, and the Guernsey Seed Company of Yankton, South Dakota, as more fully set forth in the report of examiner, Exhibit "A", page 20.

VI.

That the company has conducted its business carelessly, negligently, irregularly and in wilful violation of law, contrary to the best interests of the stockholders, policy holders, creditors, and the public in many and various ways, as set out more fully in the report attached hereto, marked "Exhibit A".

Wherefore, this Plaintiff, The Department of Trade and Commerce of the State of Nebraska, prays that this court direct the Department of Trade and Commerce to take possession of the property, records and effects and conduct the business of the defendant corporation, the Lion Bonding and Surety Company, and retain such
 83 possession and conduct the business until such time as after a hearing it shall appear to the Court that the cause of the order directing the Department of Trade and Commerce to take possession has been removed, and that the company can properly resume possession of its property, records and effects and the conduct of its business; and further prays that an order may issue forthwith from this Court, directing the defendant, the Lion Bonding and Surety Company to show cause why the Department of Trade and Commerce should so not take possession of its property, records and effects and conduct its business; and further prays that pending the return of such order to show cause and a hearing thereon this court may issue an order restraining the defendant, the Lion Bonding and Surety Company, from the transaction of its business, and from the disposition of any of its property, records and effects until the further order of this Court; and for such other and further relief as may to the Court seem just and equitable under the circumstances.

THE DEPARTMENT OF TRADE AND
 COMMERCE OF THE STATE OF
 NEBRASKA,

By ————
Secretary.

Answer.

In the District Court of Douglas County, Nebraska.

Doc. —, No. —.

DEPARTMENT OF TRADE AND COMMERCE OF THE STATE OF NEBRASKA, Plaintiff,

vs.

LION BONDING & SURETY Co., a Corporation, Defendant.

Comes the defendant, the Lion Bonding and Surety Company, and to the petition of the Plaintiff makes the following answer:

I.

Defendant admits the allegations of plaintiff's petition, except Paragraph Five (5) thereof.

II.

Further answering, the defendant assents to the appointment of the Department of Trade and Commerce to take charge of its business for the purposes set forth in the plaintiff's petition, and shows to the

84 Court that it is to the best interest of the defendant company and of the policyholders, creditors, and stockholders thereof, that the conduct of the business of the said defendant company be placed in the hands of the Department of Trade and Commerce as prayed for in the plaintiff's petition.

Wherefore, the defendant joins plaintiff in asking that the prayer of plaintiff's petition herein be granted and that the Department of Trade and Commerce be placed in control of the company pursuant to the provisions of the resolution of the Board of Directors attached hereto and marked Exhibit "A".

LION BONDING & SURETY CO.,

By _____,
Attorneys for Defendant.

STATE OF NEBRASKA,
County of Douglas, ss:

E. P. McDonald, being first duly sworn, on oath deposes and says that he is attorney for the defendant in the above entitled action; that he has read the foregoing answer to the petition of the plaintiff and that the facts therein stated are true, as he verily believes.

Subscribed in my presence and sworn to before me this — day of April, 1921.

_____,
Notary Public.

EXHIBIT "A."

Special Meeting of the Board of Directors for the purpose of determining the course of procedure to be pursued with reference to the contemplated action of the Department of Trade and Commerce to take possession of and administer the affairs of the Company.

There were present: E. R. Gurney, E. P. McDonald, Phil Kohl, H. C. Leigh, U. S. Conn, C. E. Negus.

The following resolution was moved by H. C. Leigh and seconded by E. P. McDonald:

85 Whereas, the Department of Trade and Commerce of the State of Nebraska is about to file a petition in the District Court of Douglas County, the purpose of which petition is to place the Department of Trade and Commerce in absolute control

of this company either for the temporary administration of its affairs under Section 3147, Article 3, Title 5, Chapter 190, of the Session Laws of 1919, or for the purpose of liquidating and winding up the affairs of the company in accordance with the above said action, and

Whereas, it is the desire of this Board that the company cooperate with the Department of Trade and Commerce in any and all things whereby the affairs of the company may be either supervised, or in the event that the Department of Trade and Commerce deems necessary, liquidated and wound up, now, therefore,

Be It Resolved that E. P. McDonald, the General Attorney of the company be authorized and instructed to co-operate with the Department of Trade and Commerce in any and all things necessary to properly place the Department of Trade and Commerce in the full possession of the Company or any and all of its assets, and to make any and all agreements necessary for the carrying out of the above purpose, and to file any and all pleadings in the District Court of Douglas County, Nebraska, or elsewhere, in answer to the above said petition or any other petition or pleading that may be filed by said department necessary to fully and completely enable the Department of Trade and Commerce under the above Section 3,147 either to temporarily administer or to liquidate and wind up its affairs as in the judgment of the Department may seem proper.

CHAS. C. BRANT,
Secretary.
E. R. GURNEY,
President and Chairman.

(Order that Plaintiff Take Possession of Property, Records, etc., of the Defendant.)

In the District Court of Douglas County, Nebraska.

THE DEPARTMENT OF TRADE AND COMMERCE OF THE STATE OF
NEBRASKA, Plaintiff,

vs.

THE LION BONDING & SURETY COMPANY, a Corporation, Defendant.

This matter now coming on for hearing before this Court upon the petition filed herein by the above named plaintiff, the
86 Department of Trade and Commerce of the State of Nebraska, alleging that, after an examination of the defendant herein, the Lion Bonding & Surety Company, a corporation said Company was found to be in such a condition that its further transaction of business would be hazardous to its policyholders, its creditors, its stockholders, and to the public, and alleging other violations of law by said defendant company, more specifically set out in the plaintiff's petition herein, and praying for an order by this Court directing the Department of Trade and Commerce of the State of Nebraska to take possession of the property, records and effects and conduct the business of said defendant company until such time as after a

hearing it shall appear to the Court that the cause of the order directing the Department of Trade and Commerce to take possession has been removed, and that the Company can properly resume possession of its property, records, and effects and the conduct of its business, and it appearing to the Court that the defendant herein has received notice of the hearing in accordance with law; and it further appearing to the Court that the defendants herein are present in Court by its officers and counsel; and the evidence being adduced and the Court being fully advised finds:

That the allegations of the plaintiff's petition herein are true and correct; that the condition of the defendant company is such that it further transaction of business would be hazardous to its policy holders, its creditors, its stockholders and to the public.

It is therefore ordered, adjudged and decreed that the plaintiff herein, the Department of Trade and Commerce of the State of Nebraska shall and is hereby ordered to take possession forthwith of the property, records and effects, and *in the* conduct the business of the defendant company, the Lion Bonding & Surety Company, and retain such possession and conduct the business of said company until such time as, after a hearing, it shall appear to the Court that the cause of this order has been removed and that the company can properly resume possession of its property, records and effects, and the conduct of its business; and it is further ordered, adjudged and decreed that the defendant company, its officers, directors, stockholders, and employees be and are hereby enjoined and restrained from in any manner interfering with the said Department of Trade and Commerce of the State of Nebraska in the carrying out of this order, and in the taking possession of the property, records and effects, and in the conduct of the business of the defendant company, the Lion Bonding and Surety Company.

Signed this 12th day of April, 1921.

— — —, Judge.

Endorsed: Filed in the District Court on May 14, 1921.

(Notice to Complainant of Hearing of Defendant's Motion for Discharge of Receivers and Motion to Dismiss Bill of Complaint.)

In the District Court of the United States for the District of Minnesota, Fourth Division.

183. Equity.

A. H. KARATZ, Complainant,

vs.

LION BONDING & SURETY COMPANY, a Corporation, Defendant.

To Messrs. Sanborn Graves & Ordway, Solicitors and Counsel for the above-named complainant:

You will please take notice that in the above named court before Honorable Wilbur F. Booth, United States District Judge at the

United States District Court Room in the United States Postoffice and court building at Minneapolis, Minnesota, at 10 o'clock in the forenoon of Tuesday, May 24th, 1921, or as soon thereafter as counsel can be heard, the defendant will present for consideration and decision of said Court, a motion to discharge the receivers heretofore appointed in said case and to restore to defendant or to the Department of Trade and Commerce of the State of Nebraska its properties and to reconsider and set aside the said original order of appointment.

At the same place and hour and before the same court, the defendant will also present its motion to dismiss the bill of complaint of the complainant. For your information as to the grounds of said motion, we are handing you herewith copies of each of the said two motions. The documentary evidence and the affidavit of Amos Thomas referred to in said motion to discharge the receivers will be placed on file with the Clerk of said court and be subject to your access on application to said Clerk.

HALLECK R. ROSE,
Solicitor and Counsel for Defendant.

88 Service of the above and foregoing notice and receipt of the copies of the motions therein mentioned is acknowledged this 16th day of May, 1921.

SANBORN, GRAVES & ORDWAY,
Solicitors and Counsel for Complainant.

Endorsed: Filed in the District Court on May 16, 1921.

(Affidavit of Bruce W. Sanborn.)

STATE OF MINNESOTA,
County of Ramsey, ss:

Bruce W. Sanborn, being first duly sworn on oath says: that he is one of the attorneys for the plaintiff in the above entitled action; that he has made inquiry as to the amount of litigation pending against the Lion Bonding and Surety Company in Duluth, Saint Paul and Minneapolis, and states on information and belief that there is pending in the office of counsel for said Lion Bonding and Surety Company at Saint Paul fourteen cases involving the sum of \$28,639.00; and that there is pending in the office of counsel for the Lion Bonding and Surety Company at Duluth, Minnesota, a large number of cases, which affiant alleges on information and belief to be the number of twelve, and that in a case against said Company, in which Carl Sandell is plaintiff, a judgment was entered in the office of the Clerk of the District Court of Saint Louis County, on March 21st, 1921, for \$1,192.46; and that there was filed in Carlton County in the case against said Company in which one Boorman was the plaintiff, on April 18th, 1921, a judgment amounting to \$335.42; and that in the same County on April 18th, 1921, there was entered a judgment for \$248.89 in the case of Strombeck vs. said Bonding Company; and on the same date in the same County in favor of the Sheet Metal Products Company a judgment for \$67.50.

Affiant further states that there is pending in the office of counsel for the Lion Bonding & Surety Company at Minneapolis, Minnesota, certain cases involving an unknown amount.

Further affiant says that in behalf of complainant he has caused to be filed in each of the United States District Courts for the Districts of Iowa, Missouri, Nebraska, Utah, Kansas and Wyoming, a certified copy of an order appointing receivers in the District of Minnesota, and has caused to be filed in the office of the Clerk of the District Courts for the Districts of Texas, Idaho and Oregon a Bill of Complaint setting forth the appointment of the receivers in the District of Minnesota, and praying for the appointment of ancillary receivers in each of the three last named districts. Further affiant saith not.

BRUCE W. SANBORN.

Subscribed and sworn to before me this 24th day of May, 1921.

[SEAL.]

V. L. BERRYMAN,

Notary Public, Ramsey County, Minn.

My commission expires June 16, 1921.

(Affidavit of John I. Levin et al.)

STATE OF MINNESOTA,
County of Ramsey, ss:

John I. Levin and A. J. Hertz, being first sworn, on oath say that since their appointment as Receivers of the Lion Bonding & Surety Company, they have spent practically all of their time familiarizing themselves with the business and assets of the Lion Bonding & Surety Company, as set out in great detail in the report and audit of the Company, which is on exhibit in the proceeding attached to the Company's petition.

That on May 10, 1921, the receivers took possession of a drag line at Lake Crystal, Minnesota, listed in the assets of the Company at \$7,450.00, but which as these affiants believe is of no greater value than \$3,500.00.

That said drag line at Lake Crystal, Minnesota, is being used by a crew of approximately twenty-three men, in completing County Ditch, No. 50, of Blue Earth County, Minnesota, a contract upon which the receivers are informed and believe the contractor defaulted, and which was being completed by his surety, the Lion Bonding & Surety Company, with the assistance of the County Engineer of said County.

That on May 17, 1921, your receivers approved the bi-weekly pay roll for the week ending May 13, 1921, for labor upon said contract in the sum of \$1,200.00; that said receivers have been informed and believe that under normal conditions prevailing with the present crew of men engaged upon said contract, the work thereon will be completed in from six to eight weeks; that the contract for said work was originally let October 25th, 1917, for \$81,000.00, out of which estimates have been allowed in the sum of

\$64,465.20, out of which there has been retained for contingencies the sum of \$7,365.20; that an arrangement has been made by the receivers with the officials of Blue Earth County to advance the necessary money out of said funds retained out of estimates with which to pay said pay roll; that your receivers believe this arrangement to be economical for the Company, and fair to its creditors wherever situated. The receivers have been informed and believe that after the completion of this contract under present arrangements, there will be available for the creditors of the Company approximately \$10,000.00.

That on May 10th, 1921, the receivers took possession of a drag line at Le Seuer Center, Minnesota, listed in the assets of said Company at \$5,000.00, but which these affiants are informed and believe is merely security for an indebtedness to said Company of \$600.00, and of no greater value to said Company, or to the receivers herein, than the said sum of \$600.00.

That your receivers are informed and believe that said \$600.00 was advanced by the Company to one James Corr, contractor for whom the Company is surety, to enable said James Corr to continue and to complete a contract for a ditch in Rice County, Minnesota; that your receivers are informed by said James Corr and believe that said work will be completed in six or eight weeks and that said promissory note will be paid in full at the end of that time, and made available to the creditors.

That on May 11th, 1921, your receivers directed the Sheriff of Lyon County, Marshall, Minnesota, to take possession of miscellaneous construction equipment listed as property of the Company of the approximate value of \$1,000.00.

That on May 11th, 1921, one of your receivers made a demand upon Peilen & Peilen, formerly agents and brokers of the Company in the City of Saint Paul, Minnesota, for any property, in their possession, and was informed by them that they had not done any business for the Company for some time, and have no assets of the Company in their possession. Your receivers were informed by said Peilen and Peilen that policies of insurance of various types issued by

91 the Company are rapidly being cancelled by the policy holders, and that said Peilen and Peilen have sustained a loss of approximately \$6,000.00 on unearned premiums paid to the Company on policies that have been cancelled. Your receivers believe that as soon as policy holders learn of the insolvency of the company, policies will continue to be cancelled in large numbers, thus further reducing and impairing the worth of the Company.

That your receivers were advised that the defendant, Lion Bonding & Surety Company, had a large amount of stock in the P. McDonell Land Company of Duluth, Minnesota. That relying upon said information, your receivers went to Duluth for the purpose of locating the P. McDonell Land Company and ascertaining the nature of the stock, and the value of the property, etc; that after some investigation, it appeared that there was no P. McDonell Land Company, and after some inquiry it was found that a Land Company was

organized in 1915 to which there was transferred a farm and a few lots in the City of Duluth in said St. Louis County; that upon further investigation of the records it appeared that the Company had at no time bought or sold or transferred any property; that in the Month of February, 1921, it amended its Articles of Incorporation, so that its corporate existence would cease on the 15th of February, 1921.

Deponents further say that they were advised that one John Sellwood and the Lion Bonding & Surety Company were the principal stockholders of the P. McDonell Land Company, and that a deed was made transferring two-fifths of the property to Sellwood and three-fifths to the Lion Bonding & Surety Company, but instead of making the deed to the Lion Bonding Company, the deed was made to a Mr. Robinson; that there was no consideration paid at the time of the transfer, although the deed conveyed an undivided three fifths in parcels of lands, which were estimated to be of the value of between \$10,000.00 and \$15,000.00.

That the receivers believe that immediate action should be taken against Mr. Robinson to recover for the Lion Bonding & Surety Company its interest in the land, which was transferred to said Robinson, and the receivers would proceed against said Robinson immediately. That your receivers are informed and believe that Mr. Robinson is a former employe of the Company.

Deponent further says that there are a large number of claims against the Company in St. Louis County, and it appears that there are at least a dozen actions involving many thousands of dollars, which are at issue and are ready for trial; that the firm of Randell and Whipple were employed by said Lion Bonding & Surety Company to defend said actions, but your receivers are informed and believe that in many instances there is no defense, which can be sustained in any Court.

Deponents further say that the firm of Randell and Whipple were employed to look after all of the interests of said Lion Bonding & Surety Company in St. Louis County, and that one of your receivers has been informed that no payment has been made to said Randell and Whipple for services, and said firm refused to continue its services, and immediate action must be taken to protect the Company's interests; that one of the receivers conferred with the firm of Randell and Whipple and advised them that the deponents would confer with its counsel and make prompt arrangements to protect the interests of the Company.

That in the statement of the condition of the Lion Bonding & Surety Company now before the Court as an exhibit, it appears on page 22 thereof, that Messrs. E. R. Gurney and W. O. Van Wyck former officers of the Company, received an option on new stock issued by the Company on or about March 19, 1918, at \$145.00 per share. The issue of stock amounts to approximately 4,000 shares of the par value of \$100.00. It is apparent that on or about May 2, 1919, said Gurney and Van Wyck changed their minds and by letter on that date to the Company stated that they considered them-

selves trustees and as such, after deducting expenses of the stock selling campaign, desired to assign all their (Bankers Sales Agency) assets to the Company. This was accomplished on May 2, 1919, and a part of said assets consisted of the P. McDonell and Company, listed at \$11,587.48.

That one of the receivers went to Elk River, Minnesota and took possession of a drag line adjoining the farm of Mr. Pereau; that said Pereau informed said receiver that he knew nothing about the property, but that the same had been left there without any care or attention. That said receiver thereupon made arrangement to have said drag line removed to the premises of said Pereau who agreed to be the custodian thereof, and your receivers are now negotiating a sale of said drag line.

There has come to the notice of the deponents, a large number of drafts, which have been presented to the Company for collection to the usual banking channels, and upon which payment has
93 been refused and the receivers state upon information and belief that there are a large number of suits pending against the Company in the State of Minnesota, and a large number of claims of various descriptions and that the assets of the Company and the claims thereof are of great diversity, and in great need of marshalling under a uniform control for the protection of the public, the Company and its creditors.

Further affiants say not.

JOHN I. LEVIN.
A. J. HERTZ.

Subscribed and sworn to before me this 24th day of May, 1921.

[SEAL.]

V. L. BERRYMAN,

Notary Public, Ramsey Co., Minn.

My commission expires June 10, 1921.

(Affidavit of A. H. Karatz.)

STATE OF MINNESOTA,

County of Hennepin, ss:

A. H. Karatz, being first duly sworn on oath says: that he is the complainant in the above entitled action; that in his complaint he sets forth in substance the liabilities of the Lion Bonding & Surety Company, and in general was familiar with the condition of the company, and that an examination of said Company had been made by certain insurance commissioners, which examination was on file with the insurance commissioner of the State of Minnesota, and a matter of public record, and a copy of which is attached to the application herein; and with the fact that no receivers had been appointed of the Lion Bonding and Surety Company; that efforts were being made to reinsure some of the business of the said Company to continue its business. Affiant further suggests that the Court take notice of Section 7892, G. S. Minnesota, 1913.

Further affiant saith not, except that this affidavit is made in support of the Bill of Complaint herein, and to request this Honorable Court to extend the receivership throughout its circuit.

A. H. KARATZ.

94 Subscribed and sworn to before me this 25th day of May,
A. D. 1921.

[SEAL.]

LILLIAN M. ANDERSON,
Notary Public, Hennepin County, Minn.

My commission expire- Jan. 31, 1928.

Endorsed: Filed in the District Court on May 25, 1921.

(Notice to Department of Trade and Commerce of the State of Nebraska et al. of Hearing on Motion to Join Them as Codefendants.)

To the Department of Trade and Commerce of the State of Nebraska and Amos Thomas, its agent:

You will please take notice that the undersigned will apply to the Honorable Wilbur F. Booth, one of the Judges of the above named Court, at the Court Room of the above named Court in the Old Post Office Building in the City of Minneapolis, State of Minnesota, on the 4th day of June, 1921, at ten o'clock in the forenoon of said day and date, or as soon thereafter as counsel can be heard, for an order joining the Department of Trade and Commerce of the State of Nebraska, and Amos Thomas, its agent, as co-defendants in the above entitled action.

You will further take notice that at the same time and place [and] undersigned will apply to said Court for an order directing the Department of Trade and Commerce and Amos Thomas, its agent, to then and there surrender and deliver all of the property and effects in its or his control, to the receivers heretofore named by this Honorable Court, in the above entitled action.

Said motion will be made upon the affidavit and petition hereto attached, and upon all of the files, records, papers and proceedings in the above entitled action.

SANBORN, GRAVES & ORDWAY,
Solicitors for Complainant.

St. Paul, Minnesota.

STATE OF MINNESOTA,
County of Ramsey, ss:

95 John I. Levin and A. J. Hertz, being first duly sworn doth each for himself depose and say that they are the duly appointed, qualified and acting receivers for the Lion Bonding & Surety Company, the defendant in the above entitled action.

Deponents further say that in order to obtain a full determination of this action, the Department of Trade and Commerce of the State

of Nebraska, and Amos Thomas, its special agent, should be made parties thereto; that said Department of Trade and Commerce of the State of Nebraska, and Amos Thomas, its special agent, have assumed control of the property and assets of the above named defendant, and are withholding same and have refused to surrender and deliver the same to your receivers.

Wherefore these affiants respectfully pray for an order of this Court joining said Department of Trade and Commerce of the State of Nebraska and Amos Thomas, its special agent as co-defendants in the above entitled action, and requiring them to forthwith surrender and deliver all of the property and assets of the Lion Bonding & Surety Company, in its or his hands or under its or his control to your receivers.

JOHN I. LEVIN.
A. J. HERTZ.

Subscribed and sworn to before me this 23rd day of May, 1921.
[SEAL.] BRUCE W. SANBORN,
Notary Public, Ramsey County, Minn.

My commission expires Oct. 26, 1925.

STATE OF MINNESOTA,
County of Ramsey, ss:

Bruce W. Sanborn, being first duly sworn, on oath says that at Minneapolis, Minnesota, on the 23rd day of May, 1921, he served the attached notice of motion with accompanying affidavit and petition upon the Department of Trade and Commerce of the State of Nebraska and upon Amos Thomas, its agent, by then and there handing to and leaving with said Amos Thomas personally and as such agent two true and correct copies of each thereof.

BRUCE W. SANBORN.

96 Subscribed and sworn to before me this 25th day of May,
1921.
[SEAL.] GENEVIEVE A. GOSSARD,
Notary Public, Ramsey County, Minnesota.

My commission expires January 18, 1926.

Endorsed: Filed in the District Court on May 26, 1921.

(Objection of Amos Thomas et al. to Being Made Codefendants to Suit.)

Special Appearance of Amos Thomas and Suggestion That the Court is Without Jurisdiction to Grant Any Relief Against Him Herein in Favor of Complainant.

Amos Thomas, appearing specially and under protest, as special agent of the Department of Trade and Commerce of the State of Nebraska to question the authority and jurisdiction of the court to

require him to answer herein, or to grant any relief or make any order against him herein in favor of the complainant pursuant to a notice given to him signed by Messrs. Sanborn Graves & Ordway, Solicitors for complainant on the 23rd day of May, 1921, or upon or under an alleged affidavit and petition signed by John I. Levin and A. J. Hertz, referred to in said notice and attached thereto and submits that this court is without jurisdiction of the persons of himself or of said Department upon the following grounds:

1. No Bill of Complaint has been exhibited or filed herein against said Amos Thomas, personally or as agent of the Department of Trade and Commerce of the State of Nebraska.

2. No subpoena in chancery or other original or lawful process has been issued herein or served upon the said Amos Thomas, personally, or as agent of the Department of Trade and Commerce of the State of Nebraska.

3. The Department of Trade and Commerce of the State of Nebraska, mentioned in said affidavit, is a Department of the executive branch of the government of the State of Nebraska, conducted by and under the direction of the Governor of said State and created by the laws of said State.

4. Neither the said Department of Trade and Commerce of the State of Nebraska, nor said Amos Thomas, as its special agent in charge of properties and effects of the Lion Bonding & Surety Company, have ever at any time assumed or exercised control of the property and assets of said corporation, save and except as specifically ordered decreed and directed so to do by and under a decree of the District Court of Douglas County, State of Nebraska, within which said county said corporation has its principal office and place of business; and said order was made and entered in adversary judicial proceedings, in due form of law, on the 12th day of April 1921, in a suit then pending in said court wherein said Department of Trade and Commerce was plaintiff and the Lion Bonding & Surety Company was defendant, as fully and at large appears upon the files, records and papers referred to in the notice to which this special appearance is made, namely, in a report filed herein by said John I. Levin and A. J. Hertz, as receivers, and in a motion to discharge said receivers, filed herein by the said Lion Bonding & Surety Company, which are here referred to in support of these objections. As an appointee of the said District Court of Douglas County, Nebraska, the said Department of Trade and Commerce of the State of Nebraska, and not otherwise, and on the same day took actual — erty and assets of said corporation within the State of Nebraska, long prior to filing herein by complainant of his said bill of complaint and long prior to the appointment herein of said Levin and Hertz as receivers, and the control and custody so taken and held of said property is the prior control and custody of the said District Court of Douglas County, Nebraska, and by its direction under its order and decree so duly made and entered and not otherwise. Said

Department of Trade and Commerce and said Amos Thomas, as its special agent to carry out and execute the said order, are, as appointees and agents so designated in said order and decree, answerable to the said District Court of Douglas County, Nebraska; and are not in that behalf or touching its control of the said corporate property as is respectfully submitted, answerable or subject to the direction or control of this honorable court; and could not relinquish the said property to any other authority, without disobeying the order and decree of said State Court. In this behalf it is further submitted that the said order and decree of the District Court of Douglas County, Nebraska, here referred to, is a valid final judgment, to be accorded full faith and credit as such in all other states.

5. The said Levin and Hertz who made said affidavit and pretended petition against said Department of Trade and Commerce are not parties, plaintiff or defendant, herein.

98 6. The rules of practice in equity require the filing of a bill and issuance and service of a subpoena, to give this court authority and jurisdiction over a party defendant, or to require a defendant to appear and answer.

The said Amos Thomas on whom said notice was served, and the said Department of Trade and Commerce, therefore pray that said notice be quashed, and pray the judgment of the Court that they be discharged and dismissed for want of jurisdiction of the court over their persons.

HALLECK F. ROSE,

*Solicitor and Counsel, Appearing Specially
and under Protest to Present This Motion
on Behalf of Amos Thomas and the
Department of Trade and Commerce of
Nebraska.*

STATE OF MINNESOTA,
County of Hennepin, ss:

Affidavit.

Amos Thomas, being first duly sworn on oath says: I was on the 12th day of April 1921, appointed and commissioned by the Department of Trade and Commerce of the State of Nebraska, as its special agent, to take charge and control of the offices, records, and effects of the Lion Bonding and Security Company of Omaha, Nebraska, pursuant to an order and judgment of the District Court of Douglas County, Nebraska, and not otherwise, and on the same day took actual physical custody of said corporate effects, for the purpose of conserving said assets, and administering the same, and now hold the said corporate offices and effects under the direction of said Court, and not otherwise.

I have from time to time reported to said court recommendations, and have asked advice of said court by written petition, and as being governed wholly in my control of said property by the directions of

said court. The said court among other things has directed said Department of Trade and Commerce to petition for and obtain ancillary receivership of the corporate property in states other than Nebraska, if found by it necessary or convenient in order to preserve and conserve said property outside of the state of Nebraska.

Neither John I. Levin nor A. J. Hertz has ever at any time presented himself to me at the home office in Omaha, Nebraska, nor made any request or demand of me personally nor by any representative for the custody of any of the premises, property, assets or effects of the Lion Bonding and Surety Company within the State of Nebraska or elsewhere; and while I have held undisputed custody of the offices, effects and properties of said corporation for and on behalf of said department of Trade and Commerce of Nebraska, I have not to the best of my knowledge taken or held any of the corporate properties within the state of Minnesota, since I first learned on May 3rd, 1921, that said receivers were appointed by order of the United States District Court District of Minnesota.

When the notice, to which the foregoing objections are made, was delivered to me, I was present in the state to attend, as counsel, the presentation to the United States Circuit Court of Appeals of an original motion to disapprove of extra-territorial jurisdiction and control by said receivers of property of said corporation, under section 56 of the United States Judicial Code, and also to attend as counsel the hearings of motion pending herein by the Lion Bonding and Surety Company to discharge said receivers and to dismiss Complainant's bill, which this court had set down for hearing on the morning of May 24, 1921.

AMOS THOMAS.

Subscribed and sworn to before me this 30th day of May, 1921.

[SEAL.]

THOMAS H. HOWARD,

Notary Public, Ramsey County, Minn.

My commission expires June 12, 1922.

Endorsed: Filed in the District Court on May 30, 1921.

(Order Denying Motions of Defendant for Discharge of Receivers and to Dismiss Bill of Complaint.)

In the United States District Court, District of Minnesota, Fourth Division.

A. H. KARATZ, Complainant,

vs.

LION BONDING AND SURETY COMPANY, a Corporation, Defendant.

In the above entitled action there came on to be heard before this Court on May 30th, 1921, in the Old Post Office Building in Minneapolis, Minnesota, the application of defendant to dismiss the bill of complainant herein, and to vacate the order

made and filed by this Court on May 2nd, 1921, appointing A. J. Hertz and John I. Levin, as Receivers of all of the property and assets of said defendant, Mr. Halleck M. Rose and Mr. Amos Thomas appearing as counsel for defendant in support of said motion, and Messrs. Sanborn Graves and Ordway appearing in opposition thereto.

Upon hearing the arguments of counsel, and after careful consideration,

It Is Ordered that the motions of the defendant aforesaid be and the same hereby are in all things denied.

WILBUR F. BOOTH,
District Judge.

Dated May 30, 1921.

Endorsed: Filed in the District Court on May 30, 1921.

(Order Denying Motion of Complainant to Make Department of Trade and Commerce of the State of Nebraska et al. Codefendants, etc.)

In the United States District Court, District of Minnesota, Fourth Division.

A. H. KARATZ, Complainant,

VS.

LION BONDING AND SURETY COMPANY, a Corporation, Defendant.

In the above entitled action there came on to be heard before this Court on May 30th, 1921, at the old Post Office Building in Minneapolis, Minnesota, the application of complainant herein that the Department of Trade and Commerce of the State of Nebraska and Amos Thomas be joined as defendants in said action, and that said Department of Trade and Commerce of the State of Nebraska and Amos Thomas be required to forthwith surrender and deliver all of the property and assets of the Lion Bonding and Surety Company in their possession, and in the possession of either of them, to the Receivers of this Court, Messrs. Sanborn Graves and Ordway appearing in support of said motions, and Mr. Halleck M. Rose and Mr. Amos Thomas appearing in opposition thereto.

101 Upon hearing the arguments of counsel, and after careful consideration,

It is hereby Ordered, that the aforesaid motions be and the same hereby are denied without prejudice, however, to the right to renew the said motions, if later on the circumstances warrant.

WILBUR F. BOOTH,
District Judge.

Dated May 30, 1921.

Endorsed: Filed in the District Court on May 30, 1921.

Assignment of Errors.

Comes now the Lion Bonding & Surety Company, appellant, and files the following assignment of errors upon which it will rely upon its prosecution of the appeal in the above entitled case from the order made by this honorable court on the 2d day of May, A. D. 1921, appointing A. J. Hertz and John I. Levir receivers of all of its property, wherever situated.

I.

The court erred in making and entering the order appointing receivers of the property of the Lion Bonding & Surety Company upon the application and bill of complaint of complainant, in that the bill of complaint showed on its face that the said court was without jurisdiction of the subject matter of said suit because the sum or amount in controversy therein is limited to \$2,100.00, and does not equal or exceed, exclusive of interest and costs the sum or amount of \$3,000.00.

II.

The court erred in making and entering the order appointing receivers of the property of the Lion Bonding & Surety Company, in that the bill of complaint of complainant showed on its face that the court was without power thereon to grant the equitable relief of appointment of receivers, the plaintiff claiming such equitable relief only as a simple contract creditor, without having reduced his claim to judgment, without having exercised or exhausted his remedy at law, and without presenting any specific lien upon or property interest of any sort in any of the said property of said Lion Bonding & Surety Company.

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III.

The court erred in making and entering said order appointing receivers of all of the property of the Lion Bonding & Surety Company upon an ex parte application and without notice to or knowledge of said defendant corporation, there being shown no imperative necessity or emergency for such judicial action without notice.

IV.

The said court erred in making and entering the order appointing said receivers of the property of said corporation in that the said suit is one of a local nature and the object and purpose of said bill as therein stated "of closing up the business of said defendant" could only be granted and exercised by the courts of the state or district in which said corporation was created and wherein it is domiciled, namely the state and district of Nebraska; and for that purpose of power of said court for the District of Minnesota is

secondary and ancillary only, and the primary jurisdiction to close up the business of the corporation within the territory of the state by which the corporation was created, resides in the courts exercising territorial jurisdiction therein.

Wherefore appellant prays that the said order appointing said receivers be reversed and such directions be given to the lower court in that behalf as may be agreeable to equity and for such relief as on the record appellant ought to have, including dismissal of appellee's bill for want of equity; and for want of jurisdiction.

HALLECK F. ROSE,

*Solicitors and Counsel for Appellant,
Lion Bonding & Surety Company.*

Endorsed: Filed in the District Court on May 30, 1921.

Petition for Appeal.

To Hon. Wilbur F. Booth, United States District Judge:

The Lion Bonding & Surety Company, defendant, feeling aggrieved by the order and judgment entered in the above entitled case on the 2nd day of May A. D. 1921, in favor of complainant and against defendant, appointing A. J. Hertz and John I. Levin receivers of all the property of said Lion Bonding & Surety Company, wherever situated; does hereby appeal from said order to the
103 United States Circuit Court of Appeals for the Eighth Circuit, for the reasons set forth in the assignment of errors filed herewith, and prays that its appeal be allowed, and that a citation be issued as provided by law, and that a transcript of the record, proceedings and documents upon which said order was based, duly authenticated be sent to said United States Circuit Court of Appeals for the Eighth Circuit under the rules of said court in such cases made and provided. And your petitioner further prays that the proper order relating to the security to be required of it for costs and damages be made.

HALLECK F. ROSE,

*Solicitors and Counsel for Lion Bonding
& Surety Company, Petitioner.*

Endorsed: Filed in the District Court on May 30, 1921.

Order Allowing Appeal.

Upon the petition for appeal and assignment of errors herein by the Lion Bonding & Surety Company, and on the motion of Halleck F. Rose, solicitor and counsel for said petitioner, it is hereby ordered that an appeal to the United States Circuit Court of Appeals for the Eighth Circuit from the order of this Court entered in the above entitled case on the 2d day of May, A. D. 1921, appointing A. J. Hertz and John I. Levin receivers of all the property of said Lion

Bonding & Surety Company, wherever situated, be and the same is hereby allowed, and that a certified transcript of the record, evidence, proceedings and documents on which said orders were based be forthwith transmitted to said Circuit Court of Appeals for the Eighth Circuit.

It is further ordered that the bond on appeal be and it is hereby fixed at the sum of \$500.00 the same to act as a bond for costs and damages.

Dated this 30 day of May, 1921.

By the Court.

WILBUR F. BOOTH,
U. S. District Judge.

Endorsed: Filed in the District Court on May 30, 1921.

104 (*Citation and Acknowledgment of Service.*)

The United States of America to A. H. Karatz, Greeting:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the Eighth Circuit, at the City of St. Louis, Missouri, sixty days from and after the day this citation bears date, pursuant to an appeal, filed in the Clerk's office of the District Court of the United States for the District of Minnesota, Fourth Division, wherein Lion Bonding & Surety Company, a corporation, is appellant, and you are appellee, to show cause, if any there be, why the judgment rendered against the said appellant, as in said appeal mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, the Honorable the Judges of the District Court of the United States for the District of Nebraska, this 30th day of May, 1921.

WILBUR F. BOOTH,
United States District Judge, District of Minnesota.

Service of above citation acknowledged this 30th day of May, 1921.

SANBORN, GRAVES & ORDWAY,
Solicitors for Appellees.

Endorsed: Filed in the District Court on May 30, 1921.

(*Bond on Appeal.*)

Know all men by these presents:

That we, Lion Bonding & Surety Company (principal) [abd] American Surety Company of New York (Surety) are held and firmly bound unto A. H. Karatz in the full and just sum of Five hundred dollars (\$500.00) to be paid to A. H. Karatz, Complainant, and all creditors of Lion Bonding & Surety Company, who elect to become complainants with him their successors, heirs, executors, administrators, or assigns, to which payment well and truly to be made,

we bind ourselves, our successors, heirs, executors, and administrators, jointly and severally by these presents.

Sealed with our seals, and dated this 30th day of May, 1921.
Whereas, lately at the — term A. D. of the District Court of the United States for the District of Minnesota, Fourth Division, to-wit on the 2nd day of May, A. D. 1921, in a suit pending in said Court between A. H. Karatz, plaintiff and Lion Bonding & Surety Company, defendant an order was rendered against the said Lion Bonding & Surety Company appointing A. J. Hertz and John I. Levin receivers of all its property, and the said Lion Bonding & Surety Company has obtained an appeal of the said Court to reverse the order in the aforesaid suit, and a citation directed to the said A. H. Karatz citing and admonishing him to be and appear in the United States Circuit Court of Appeals for the Eighth Circuit, at the City of St. Louis, Missouri, sixty days from and after the date of said citation.

Now, The Condition of the Above Obligation is Such, That if the said Lion Bonding & Surety Company shall prosecute said appeal to effect, and answer all damages and costs if it fails to make good its plea, then the above obligation to be void, else to remain in full force and virtue.

LION BONDING & SURETY COMPANY,

By HALLECK F. ROSE, [SEAL.]
Its Solicitor and Counsel of Record and
By AMOS THOMAS,

*Special Agent Department of Trade and
Commerce of Nebraska.*

AMERICAN SURETY COMPANY OF NEW YORK,

By J. G. LEWIS, [SEAL.]
Resident Vice-President.

Attest:

A. M. WOLD,

Resident Assistant Secretary at Minneapolis, Minn.

Sealed and Delivered in Presence of

R. L. BEAUCHAINE.

V. L. PRIESS.

Approved by

WILBUR F. BOOTH,
Judge.

108 STATE OF MINNESOTA,
County of Hennepin, ss:

On this 31st day of May, A. D., 1921, before me personally appeared J. G. Lewis and A. M. Wold to me personally known, who, being by me duly sworn, did say on oath: That they are the Resident Vice-President and the Resident Assistant Secretary, respectively,

of the American Surety Company of New York, the corporation described in and which executed the foregoing instrument; that the seal affixed to said instrument is the corporate seal of said corporation; that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors; and said J. G. Lewis and said A. M. Wold each acknowledged the said instrument to be the free act and deed of said corporation.

[SEAL.]

G. M. KLABO,
Notary Public, Hennepin County.

My commission expires April 25, 1924.

Endorsed: Filed in the District Court on May 31, 1921.

(Memorandum Opinion of District Court.)

This cause comes on to be heard upon two motions made on behalf of the Lion Bonding & Surety Company, one to discharge the receivers, the other to dismiss the bill of complaint.

A motion is also made by the receivers for an order joining the Department of Trade and Commerce of the State of Nebraska, and Amos Thomas, its agent, as co-defendants herein, and for an order directing said Department of Trade and Commerce and said Thomas as such agent to surrender and deliver all of the property and effects of its or his control to the receivers herein.

The two motions made on behalf of the Lion Bonding & Surety Company are based largely upon the same grounds; first, that the amount involved in the creditors' bill is not sufficient to give this court jurisdiction, being less than \$3,000. It is true that the amount of the plaintiff's claim is less than \$3,000, but in my judgment the amount of plaintiff's claim in a case of this kind is not necessarily the amount involved in the controversy. The bond sought to be taken possession of and distributed in the receivership on behalf of the plaintiff and other creditors, in my judgment is the amount involved for the purpose of determining the jurisdictional question.

107 Another ground of the motions is that the plaintiff is not a judgment creditor, but a simple contract creditor. While it is true that the general rule is that a plaintiff in creditors' bill should be a judgment creditor, there are numerous exceptions to the rule. These exceptions are noted in numerous cases, among which is *Williams vs. Adler Company* 227 Fed. 374. In the present case it appears [the] the Lion Bonding & Surety Company is insolvent, that it is outside of the jurisdiction, and that the obtaining of a judgment would serve no useful purpose. It would also seem as if the claim of the plaintiff could not be seriously contested. Under all the circumstances, I am inclined to think that the present case comes within the exceptions to the rule, rather than the rule itself.

Another ground for the motions is that the suit is of a local character, and should have been brought in the State of Nebraska, where the company was incorporated. If the present suit were one to dissolve the corporation, there would be force in this contention; or if

the suit were one to interfere with the internal management of the corporation, there would be force in the contention. But inasmuch as the present suit is not of either class, but is one to collect and administer assets of an insolvent corporation, it does not seem to me that the suit can be called properly one of a local character.

Another ground, and perhaps the most important one, is that the State Court of Douglas County, Nebraska, had already obtained jurisdiction of the property of the Lion Bonding & Surety Company and of the matters in controversy prior to the commencement of the present suit in this jurisdiction. It appears that a petition was filed in the State Court of Douglas County on April 12, 1921, and that on that date an order was entered directing the Department of Trade and Commerce to take possession of the assets of the corporation and manage the same. Of course the order entered had no extra-territorial force.

The bill in the present suit was filed May 2, 1921, and the receivers were appointed on that date. I am free to state that if at the time of the appointment of the receivers I had known of the Nebraska proceeding, the order made in the present suit would have been of a somewhat different character, though I cannot say that receivers would not have been appointed. It appears now that the receivers, pursuant to the provisions of the Judicial Code, have filed the bill of complaint in the states of Iowa, Missouri, Nebraska, Utah, Kansas and Wyoming, all within this circuit, and that application for ancillary

108 receivership have been made in Texas, Oregon and Idaho.

Since the commencement of the suit in this court the character of the Nebraska proceeding has been changed, or at least the scope of the proceeding has been enlarged. This does not appear directly from the record before me, but from statements of counsel in the course of their argument. So that the present scope of the Nebraska proceeding is more nearly allied to the scope of the suit in this court. I am not inclined at this time to make any point of the fact that the scope of the Nebraska proceeding in the first instance was not of as broad character as the suit commenced in this court. It has always been my purpose, and will continue to be, to avoid any conflict of jurisdiction between this court and the court of any other jurisdiction, and, for the present at least, the receivers will not be instructed to take any steps to interfere with the possession by the State Court of Nebraska of the property within its jurisdiction.

I do not think, however, that the motion to discharge the receivers or to dismiss the bill should be granted. In my opinion there exists good ground for the present receivership to continue. Just what the scope shall be given to the receivership will depend somewhat on the decision of the Circuit Court of Appeals upon the motion pending before it in this matter. I see no reason, however, if it should be ultimately determined that the State Court of Nebraska should proceed to administer the assets in that state, and perhaps in certain other states, but that the present receivership should also continue, and the assets in certain states be administered in the suit, in this court, why this cannot be done without any unseemly conflict of jurisdiction. It seems to me it would be perfectly possible for both

courts to proceed with the administering of the assets under the control of each, and that by co-operation a distribution could be made so that all creditors of the same class would receive like dividends, whether they may be received from the State Court of Nebraska or from this court. I simply make this suggestion at the present time because it is not possible at present to outline definitely what future course of action may become necessary.

As to the motion made by the receivers, it should in my judgment be denied at the present time, without prejudice to its being renewed in the future, if circumstances warrant.

WILBUR F. BOOTH,
Judge.

Endorsed: Filed in the District Court on June 6, 1921.

109 (*Præcipe for Transcript by Defendant.*)

To the Clerk of the District Court of the United States for the District of Minnesota, Fourth Division:

You will please include in the record and transcript on appeal in said case for the United States Circuit Court of Appeals, Eighth Circuit, in the appeal taken by defendant, Lion Bonding & Surety Company, from the interlocutory order appointing receivers entered May 2, 1921, the following papers and proceedings:

1. Bill of complaint filed May 2, 1921.
2. Order appointing receivers entered May 2, 1921.
3. Bond of receivers filed May 4, 1921.
4. Subpœna and return of service filed May 9, 1921.
5. Assignment of errors.
6. Petition for allowance of appeal.
7. Order allowing appeal.
8. Original citation and acceptance of service.
9. Appeal bond.
10. Præcipe for transcript.
11. Clerk's certificate.

HALLECK F. ROSE,
Counsel for Defendant, Appellant.

Received copy of above præcipe this 8th day of June, 1921.

SANBORN, GRAVES & ORDWAY,
Solicitor- and Counsel for Plaintiff.

Endorsed: Filed in the District Court on June 22, 1921.

(Præcipe for Transcript by Complainant.)

To the Clerk of the District Court of the United States for the District of Minnesota, Fourth Division:

You will please include in the record and transcript on appeal in said case for the United States Circuit Court of Appeals, Eighth Circuit, in the appeal taken by defendant Lion Bonding and Surety Company from the interlocutory order appointing receivers
110 entered May 2, 1921, the following papers and proceedings:

1. Notice of motion to dismiss bill of complaint, etc.
2. Motion of defendant to dismiss bill of complaint.
3. Motion of defendant for discharge of receivers and for restoration of defendant's property to defendants' custody or to the custody of the Department of Trade and Commerce of the State of Nebraska.
4. Report of receivers filed May 14, 1921.
5. Affidavits of Bruce W. Sanborn, et al.
6. Affidavit and notice of motion to join certain parties as co-defendants.
7. Special appearance of Amos Thomas in opposition to jurisdiction.
8. Memorandum of Honorable Wilbur F. Booth on various motions.
9. Order of Honorable Wilbur F. Booth denying motions of defendant.
10. Order of Honorable Wilbur F. Booth denying motions of complainant.

SANBORN, GRAVES & ORDWAY,
Counsel for Complainant-Appellee.

Dated June 11, 1921.

Endorsed. Filed in the District Court on June 13, 1921.

(Clerk's Certificate to Transcript)

UNITED STATES OF AMERICA:

District Court of the United States, District of Minnesota, Fourth Division.

I, Charles L. Spencer, Clerk of said District Court, do hereby certify and return to the Honorable, the United States Circuit Court of Appeals for the Eighth Circuit, that the foregoing, consisting of 109 pages, numbered consecutively from 1 to 109 inclusive, is a true and complete transcript of the Records, Process, Pleadings, Orders,

Decree, and all other proceedings in said cause wherein A. H. Karatz is complainant, and Lion Bonding & Surety Company, a corporation, is defendant, and of the whole thereof, (except as modified by the præcipe of the parties hereto, to be found at pages 108 and 109 of this transcript), as appears from the original records and files of said Court; and I do further certify and return that I have annexed to said transcript and included within said paging the original Citation, together with the proof of service thereof.

In witness whereof, I have hereunto set my hand, and affixed the seal of said Court, at Minneapolis, in the District of Minnesota, this 27th day of July, A. D. 1921.

[Seal U. S. Dist. Court, Fourth Division, Dist. of Minnesota.]

CHARLES L. SPENCER,
Clerk.

By THOMAS H. HOWARD,
Deputy.

Filed Jul. 30, 1921.

E. E. KOCH,
Clerk.

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(*Opinion.*)

United States Circuit Court of Appeals, Eighth Circuit, December Term, A. D. 1921.

No. 5902.

LION BONDING & SURETY COMPANY, Appellant,

vs.

A. H. KARATZ, Appellee.

Appeal from the District Court of the United States for the District of Minnesota.

Mr. Halleck F. Rose (Mr. Amos Thomas, Mr. George W. Pratt, and Mr. Clarence A. Davis, Attorney General of Nebraska, were on the brief with him), for appellant.

Mr. Bruce W. Sanborn (Messrs. Sanborn, Graves & Ordway were on the brief with him), for appellee.

Before Stone, Circuit Judge, and Trieber and Munger, District Judges.

TRIEBER, *District Judge*, delivered the opinion of the Court.

The facts as they appear from the record in the case are:

On May 2, 1921, the appellee filed his complaint in equity in the District Court of the United States for the District of Minnesota on

behalf of himself and all other parties similarly situated, who may desire to make themselves parties, against the appellant in which it was charged that appellee is a citizen of the State of Minnesota and appellant an insurance corporation organized under the laws of the State of Nebraska, admitted to do business in the State of Minnesota; that in pursuance to such authority, it has written a large amount of liability insurance and has outstanding in the state policies

and obligations as surety exceeding \$100,000.00; that in payment of a loss in the State of Minnesota, for which it became
113 liable in the sum of \$2,100.00 to one of its policyholders, a corporation created under the laws of the State of Minnesota, it gave, on April 19, 1921, a draft in the City of St. Paul, Minnesota, drawn by its duly authorized agent, on the home office of appellant in the City of Omaha, State of Nebraska, for said sum, which said draft became, by proper endorsement, in due course of business, for a valuable consideration, the property of appellee; that said draft was duly presented to appellant for payment and refused for the reason that appellant did not have sufficient funds to pay the same. The appellant has a large amount of personal property in the State of Minnesota of the value of at least \$20,000.00; that it has liabilities amounting to the sum of \$377,790.00, which it is unable to pay and has been denied the right to continue to do business in the States of Minnesota and Nebraska; that it is insolvent and there is great danger of the property being wasted and dissipated by litigation ensuing and about to ensue upon the large amount of unpaid claims owing; that various creditors are threatening to sue the company and collect their claims by executions, attachments or other legal proceedings, unless the court will take its property into its custody and appoint receivers for the purpose of converting its assets into money and distributing the same among its creditors. That the object of the action is for the purpose of closing up its business and causing a just and fair distribution of its property among its creditors. That appellant's property asked to be taken control of by the court, greatly exceeds in value the sum of \$3,000.00, exclusive of interest and costs.

The prayer of the bill is to appoint a receiver of appellant's property with the usual powers of a receiver, and an injunction, but does not ask that affairs of the corporation be wound up or that it be dissolved. The complaint was duly verified. Upon presentation of the complaint, the court, on May 2, 1921, granted the prayer of the complaint, appointed receivers, and authorized the plaintiff to apply to any other District Court for ancillary proceedings. The receivers duly qualified. On May 14, 1921, appellant filed a motion to dismiss the complaint, upon two grounds.

1. That plaintiff's claim was only for \$2,100.00 and therefore insufficient to give the court jurisdiction.

114 2. That plaintiff is only a simple contract creditor on a claim not reduced to judgment, and without having exhausted his remedy at law.

It also filed at the same time, a motion to discharge the receivers and for a restoration of the property to its custody or the custody of the Department of Trade and Commerce of the State of Nebraska. The Department has not intervened in the cause and has presented no claim. The grounds relied on in this motion are that the court was without jurisdiction for the same reasons set out in the motion to dismiss the complaint, and the additional ground that the defendant is an insurance company, existing under the laws of that State, and the Governor, through the agency of the Department of Trade and Commerce is vested with power to regulate, supervise and control the business of insurance, and the corporations engaged in it. That said Department of Trade and Commerce, is charged with the duty of examining all insurance companies, and if necessary for the protection of the policyholders apply to the District Court of the County in which the company has its principal office for an order directing the company to show cause why the Department should not take possession of the property, etc., and conduct or close its business, and upon such application the District Court is vested with power to decree forthwith that said Department take possession of said property and retain possession thereof until after a hearing the court finds that the cause of such order has been removed, and on like application the court may order the liquidation of the business of such company, dissolve it and enjoin it from transacting business or disposing of the property. That before appellee filed his complaint in this action, viz: on April 12, 1921, in judicial proceedings had in the District Court of Douglas County, State of Nebraska, wherein the Department of Trade and Commerce was plaintiff and the appellant herein, defendant, that court entered an order directing the Department to take possession of appellant's property, and conduct its business until such time, as it shall appear, after a hearing that the cause of said order had been removed, and also enjoining the company from in any manner interfering with the conduct of the business by the Department and the usual injunctive orders made in such cases. That pursuant to said order the Department took immediate possession of the assets, books, etc., of the Company for the purpose set out in the order and decree

115 of the District Court of Douglas County, and has been conducting the business ever since. A transcript of the proceedings in the State District Court is filed with the motion as an exhibit. From this exhibit it appears that the allegations in the motion are true. The prayer of the complaint of the Department in that cause is:

"Wherefore, This Plaintiff, the Department of Trade and Commerce of the State of Nebraska, prays that this Court direct the Department of Trade and Commerce to take possession of the property, records and effects and conduct the business of the defendant corporation, the Lion Bonding and Surety Company, and retain such possession and conduct the business until such time as after a hearing it shall appear to the Court that the cause of the order directing the Department of Trade and Commerce to take possession has

been removed, and that the Company can properly resume possession of its property, records and effects and the conduct of its business; and further prays that an order may issue forthwith from this Court, directing the defendant, the Lion Bonding & Surety Company to show cause why the Department of Trade and Commerce should not take possession of its property, records, and effects and conduct its business; and further prays that pending the return of such order to show cause and a hearing thereon, this Court may issue an order restraining the defendant, the Lion Bonding & Surety Company, from the transaction of its business, and from the disposition of any of its property, records and effects until the further order of this Court; and for such other and further relief as may to the Court seem just and equitable under the circumstances."

It also shows in an itemized report filed in the State District Court and which is a part of the exhibit filed in this cause, that the company is wholly insolvent, that its liabilities, in addition to the loss of the \$300,000.00 capital stock, exceed its assets by \$377,790.68.

On May 30, 1921, after a hearing, the motion of appellant to dismiss the complaint and to vacate the appointment of the receivers made on May 2, 1921, was by the court denied and from this order this appeal is prosecuted under Section 129 of the Judicial Code. Prior to the hearing on May 30, 1921, on the 14th day of May, 1921,

the appellant presented to this court, which was then in session at St. Paul, a motion under Section 56 of the Judicial Code to disapprove the order appointing the receivers, which motion was heard by the Court, composed at the time of the lamented Circuit Judge Hook, Judge Neblett and the writer of this opinion. The grounds on which this motion was based were in effect the same as those set out in the assignment of errors on this appeal.

The court denied the motion on May 31, 1921, all the Judges concurring.

The assignments of error are:

I.

"The court erred in making and entering the order appointing receivers of the property of the Lion Bonding & Surety Company upon the application and bill of complaint of complainant, in that the bill of complaint showed on its face that the said court was without jurisdiction of the subject matter of said suit because the sum or amount in controversy therein is limited to \$2,100.00, and does not equal or exceed, exclusive of interest and costs the sum or amount of \$3,000.00.

II.

"The court erred in making and entering the order appointing receivers of the property of the Lion Bonding & Surety Company, in that the bill of complaint of complainant showed on its face that the court was without power thereon to grant the equitable relief

of appointment of receivers, the plaintiff claiming such equitable relief only as a simple contract creditor, without having reduced his claim to judgment, without having exercised or exhausted his remedy at law, and without presenting any specific lien upon or property interest of any sort in any of the said property of said Lion Bonding & Surety Company.

III.

"The court erred in making and entering said order appointing receivers of all of the property of the Lion Bonding & Surety Company upon an ex parte application and without notice to or knowledge of said defendant corporation, there being shown no imperative necessity or emergency for such judicial action without notice.

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IV.

"The said court erred in making and entering the order appointing said receivers of the property of said corporation in that the said suit is one of a local nature and the object and purpose of said bill as therein stated 'of closing up the business of said defendant' could only be granted and exercised by the courts of the state or district in which said corporation was created and wherein it is domiciled, namely the state and district of Nebraska; and for that purpose the power of said court for the District of Minnesota is secondary and ancillary only, and the primary jurisdiction to close up the business of the corporation within the territory of the state by which the corporation was created, resides in the courts exercising territorial jurisdiction therein."

Had the District Court jurisdiction of the cause, the plaintiff's claim not being in excess of \$3,000.00, although the funds to be taken charge of and administered for the benefit of the company's creditors, amounted to several hundred thousand dollars, the action being, not only for the benefit of the plaintiff, but all creditors of the company similarly situated?

This contention was ably presented by counsel at the former hearing on the motion to disapprove the appointment of the receivers and denied. The same contention was made in *Dill v. Supreme Lodge of Knights of Honor*, 223 Fed. 807, and *Cummings v. Supreme Council of Royal Arcanum*, 247 Fed. 992. The jurisdiction of the court in those cases was invoked by certificate holders of the defendants, fraternal insurance corporations, none of the certificates in either case exceeding \$3,000.00, but in each the jurisdiction was sustained. In the *Knights of Honor* case it was expressly raised, the writer of this opinion having presided in that case, although the opinion, which was delivered orally at the conclusion of the hearing, does not mention it. But even had it not been raised, the courts of the United States being courts of limited jurisdiction, it would have been the duty of the court to dismiss the cause of its own motion, if not within its jurisdiction, even if the parties had

by express consent sought to waive it. *Minnesota v. Northern Security Company*, 194 U. S. 48, 62; *C. B. & Q. Ry. v. Willard*, 220 U. S. 413, 419; *Chicago R. I. & Pac. Ry. Co. v. State of Nebraska*,

251 Fed. 279, 163 C. C. A. 435 (8th Ct.); *New York Life Ins. Co. v. Johnson*, 255 Fed. 985, 167 C. C. A. 250 (8th Ct.).

In the *Royal Arcanum* case the court dismissed the bill on the merits, which of course it neither would or could have done, if without jurisdiction to entertain the action. The record in that case, which the court examined, shows that the plaintiffs were holders of certificates of insurance, none of which exceeded \$3,000.00, and the liability of the defendant association on these certificates was only contingent, being payable on the death of the member, while in good standing.

We concur in the conclusion of Judge Booth in his memorandum of opinion that "the bond (evidently the property and books intended) sought to be taken possession of and distributed in the receivership on behalf of the plaintiff and other creditors, in my judgment is the amount involved for the purpose of determining the jurisdictional question."

II.

The second assignment of error that the plaintiff is not entitled to the equitable relief of appointment of receivers as he is only a simple contract creditor, without having reduced his claim to a judgment and exhausted his remedy at law is equally without merit. The facts alleged in the complaint, and which are admitted, are that, the company is wholly insolvent and its property in danger of loss and dissipation by reason of seizures under execution and attachments, and waste, to the great loss of the creditors, justified the action of the District Court to appoint receivers, without the necessity of useless proceedings at law. *Williams v. Adler-Goldman Comm. Co.*, 227 Fed. 374, 142 C. C. A. 70 (8th Ct.), affirming 211 Fed. 530, and authorities cited in the opinions of this case. As said in *Case v. Beauregard*, 101 U. S. 688, on like contentions: "Neither law nor equity requires a meaningless form, '*Bona, sed impossibilia non cogit lex.*' It has been decided that where it appears by the bill that the debtor is insolvent and that the issuing of an execution would be of no practical utility, the issue of an execution is not a necessary prerequisite for equitable interference."

III.

The allegations in the verified complaint show beyond question such an imperative necessity or emergency as required a court of equity to appoint receivers on an *ex parte* application. If the facts charged and upon which the receivers were appointed had been put in issue by denials on the motion to discharge the receivers, and had not been sustained by competent evidence the court would undoubtedly have discharged them. The defendant in its motion to discharge the receivers denied none of

the allegations in the complaint. All the defendant relied on in its motion were the grounds set out in the assignment of errors now relied on for a reversal of the order of the District Court.

IV.

The fourth assignment raises the important question whether in view of the proceedings had in the District Court of Douglas County, State of Nebraska, in the action instituted by the Department of Trade and Commerce of that State against this defendant, prior to the institution of this cause in the court below and the order of that court, deprived the court below of jurisdiction to appoint the receivers, and for this reason should have granted the motion of defendant to discharge them and restore its property to the defendant or custody of the Department of Trade and Commerce of the State of Nebraska.

That in the absence of a statute, vesting the title to the property of an insolvent in the receivers upon their appointment, such appointments give a receiver no right to the possession of the property of the insolvent in another state, or if the appointment is made by a national court of the property, in another district, is well settled. The leading cases of the Supreme Court on that rule of law is *Booth v. Clark*, 58 U. S. 322; *Great Western Mining Co. v. Harris*, 198 U. S. 561, 575, followed ever since, not only by all national, but all — courts. In *Rose's* notes to *Booth v. Clark*, the authorities are collected, showing how uniform the decisions of the courts are on that question. The latest case re-affirming this principle is *Sterrett v. Second Nat'l Bank*, 248 U. S. 73, affirming 246 Fed. 753, 159 C. C. A. 55. But when the statutes of the state under whose law as the corporation is created vests the title to all property of the defendant in the receivers, assignee or a State Board, they are entitled to the possession wherever the property is situated. In *Relfe v. Rundle*, 103 U. S. 222, 226, it was held that, as the Insurance Commissioner of the State of Missouri, was by the laws of that State, vested with the title of all the property and assets of insolvent insurance corporations created by that State, the Insurance Commissioner can maintain suits in the courts of any State and recover the property, although in possession of a receiver appointed by a court of a foreign state. In *Bernheimer v. Converse*, 206 U. S. 516, 534, and *Converse v. Hamilton*, 224 U. S. 243, 260, the same conclusions were reached under a statute of the State of Minnesota, vesting in a receiver of an insolvent corporation the absolute title to all its property, with power to sue in any court, including those of a foreign jurisdiction. And this rule of law is recognized by the Supreme Court of Nebraska, *Kinsler v. Casualty Co.*, 103 Nebr. 382, 172 N. W. 33.

Counsel for appellant contend that under the laws of the State of Nebraska the title to all the property of an insolvent insurance company, created by the laws of that state, no matter where situated, vests in the Department of Trade and Commerce, when upon an application to a District Court of the county, in which the prin-

cial office of the company is located, the court, by its order, places the property in the possession of that Department, and therefore this action is within the rulings in *Relfe v. Rundle*, supra, and the *Converse* cases. The statute relied on is the Act of 1919, Laws of Nebraska, 1919, pp. 573, et seq.

The provisions of that Act, on which counsel rely, are in Section 4 of that Act and are as follows:

"1. Whenever any domestic company is insolvent * * * or is found, after an examination, to be in such condition that its further transaction of business would be hazardous to its policyholders, or to its creditors, or to its stockholders, or to the public; or has wilfully violated its articles of incorporation or association or any law of this state, or whenever any trustee, director, manager or officer thereof refuses to be examined under oath touching its affairs, the department of trade and commerce may apply to the District Court, or any judge thereof in the county or judicial district in which the principal office of such company is located, for an order directing such company to show cause why the department of trade and commerce should not take possession of its property, records and effects and conduct or close its business, and for such other relief as the nature of the case and the interest of its policyholders, creditors, stockholders or the public may require.

121 "2. On such application, or at any time thereafter, such court or judge may, in his discretion, issue an order restraining such company from the transaction of its business, or disposition of its property, records, and effects, until the further order of the court. On the return of such order to show cause, and after a full hearing, the court shall either deny the application or direct the department of trade and commerce forthwith to take possession and conduct the business until on the application of the department of trade and commerce, or of such company, it shall, after a like hearing, appear to the court that the cause of such order directing the department of trade and commerce to take possession has been removed, and that the company can properly resume possession of its property, records and effects, and the conduct of the business.

"3. If, on a like application and order to show cause and after a full hearing, the court shall order the liquidation of the business of such company, such liquidation shall be made by and under the direction of the department of trade and commerce, which may deal with the property, records, effects and business of such company in the name of the department of trade and commerce, or in the name of the company as the court may direct, and it shall be vested, by operation of law, with title to all the property, effects, contracts and rights of action of such company as of the date of the order so directing it to liquidate. * * *"

Had the department proceeded in its action in the District Court of Douglas County under sub-section three of Section four of the Act, and the court had made an order in conformity with such an

application, the contention of counsel could probably be sustained, a question not before us and therefore not passed on, but as shown by the transcript of the proceedings in that court filed by appellant, which is a part of the record in this case, the petition of the Department was under sub-section one and the order of the District Court of the State in conformity with sub-section two, which on the petition presented to it was the only relief prayed and therefore the only relief the court could grant. The order of the court, which is in strict compliance with the prayer of the bill and the statute, is:

"It is therefore ordered, adjudged and decreed that the plaintiff herein, the Department of Trade and Commerce of the State of Nebraska, shall and is hereby ordered to take possession
122 forthwith of the property, records and effects and conduct the business of the defendant company, the Lion Bonding & Surety Company, and retain such possession and conduct the business of said company until such time as, after a hearing, it shall appear to the Court that the cause of this order has been removed and that the company can properly resume possession of its property, records and effects, and the conduct of its business; and it is further ordered, adjudged and decreed that the Defendant Company, its officers, directors, stockholders, and employees, be, and are hereby enjoined and restrained from in any manner interfering with the said Department of Trade and Commerce, of the State of Nebraska in the carrying out of this order and in the taking possession of the property, records and effects, and in the conduct of the business of the defendant company, the Lion Bonding & Surety Company."

There is nothing in this order vesting the title to the property of the company in the Department, nor did the Department ask it in its petition.

Under that order the Department could neither claim possession of any property of the company out of the State of Nebraska, nor maintain an action for its recovery in any court other than one of or in the State of Nebraska. As the Company was admittedly insolvent, had large property interests in the State of Minnesota, within the jurisdiction of the court below, was unable to pay its debts, then due, its assets and property in imminent danger of being dissipated by reason of these conditions, the court, upon the application presented by the plaintiff's complaint, exercised proper discretion in appointing the receivers, and denying the motion of the defendant company to discharge them.

The decree is affirmed.

Let the mandate in this case go forthwith.

Filed April 28, 1922.

(Clerk's Certificate.)

United States Circuit Court of Appeals, Eighth Circuit.

I, E. E. Koch, Clerk of the United States Circuit Court of Appeals for the Eighth Circuit, do hereby certify that the foregoing contains a full, true and complete transcript of the record from the District Court of the United States for the District of Minnesota as prepared and printed under the rules of the United States Circuit Court of Appeals for the Eighth Circuit, under the supervision of its Clerk, and a full, true and complete copy of the opinion of said United States Circuit Court of Appeals in said cause, which said transcript of the record and opinion are called for in the præcipe of counsel for appellant included in transcript No. 6007 between the same parties and for purposes of identification this transcript of the record and opinion have been marked Volume 2 and numbered and entitled in case No. 6007.

In testimony whereof, I hereunto subscribe my name and affix the seal of the United States Circuit Court of Appeals for the Eighth Circuit, at office in the City of St. Louis, Missouri, this seventeenth day of August, A. D. 1922.

[Seal of the United States Circuit Court of Appeals, Eighth Circuit.]

E. E. KOCH,
*Clerk of the United States Circuit Court of
Appeals for the Eighth Circuit.*

124 In the United States Circuit Court of Appeals for the Eighth Circuit,

No. 6007.

LION BONDING AND SURETY COMPANY, Appellant,

VS.

A. J. KARATZ, Appellee.

Appeal from the District Court of the United States for the District of Minnesota.

Stipulation.

The parties hereto hereby stipulate and agree that the record herein now on file in the office of the Clerk of the Supreme Court of the United States, upon which the petition for a writ of certiorari was presented and granted, may be taken as a return to said writ of certiorari, and that the Clerk send to said Supreme Court a certi-

fied copy of this stipulation as his return to the writ of certiorari granted by said Supreme Court herein.

JOHN F. STOUT,
HALLECK F. ROSE,
ARTHUR R. WELLS,
PAUL L. MARTIN,

Counsel for Appellant.

BRUCE W. SANBORN,
WILLIAM G. GRAVES,
SAMUEL G. ORDWAY,
WILLIAM R. KUEFFNER,

Counsel for Appellee.

(Endorsed:) No. 6007. In the United States Circuit Court of Appeals for the Eighth Circuit. Lion Bonding and Surety Company, Appellant, vs. A. H. Karatz, Appellee. Appeal from the District Court of the United States for the District of Minnesota. Stipulation as to return to Writ of Certiorari. Filed Nov. 15, 1922, E. E. Koch, Clerk.

125 UNITED STATES OF AMERICA, ss:

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the Honorable the Judges of the United States Circuit Court of Appeals for the Eighth Circuit, Greeting:

Being informed that there is now pending before you a suit in which Lion Bonding & Surety Company is appellant, and A. H. Karatz is appellee, No. 6007, which suit was removed into the said Circuit Court of Appeals by virtue of an appeal from the District Court of the United States for the District of Minnesota, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said Circuit Court

of Appeals and removed into the Supreme Court of the United
126 States, do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable William H. Taft, Chief Justice of the United States, the twenty-sixth day of October, in the year of our Lord one thousand nine hundred and twenty-two.

WM. R. STANSBURY,

Clerk of the Supreme Court of the United States.

127 [Endorsed:] File No. 29,124. Supreme Court of the United States, October Term, 1922. No. 574. Lion Bonding & Surety Company vs. A. H. Karatz. Writ of Certiorari. Filed Nov. 15, 1922. E. E. Koch, clerk.

Return to Writ.

UNITED STATES OF AMERICA,

Eighth Circuit, ss:

In obedience to the command of the within writ of certiorari and in pursuance of the stipulation of the parties, a full, true and complete copy of which is hereto attached, I hereby certify that the transcript of record furnished with the application for a writ of certiorari in the case of Lion Bonding and Surety Company, Appellant, v. A. H. Karatz, No. 6007, is a full, true and complete transcript of all the pleadings, proceedings and record entries in said cause as mentioned in the certificate thereto.

In testimony whereof, I hereunto subscribe my name and affix the seal of the United States Circuit Court of Appeals for the Eighth Circuit, at office in the City of St. Louis, Missouri, this seventeenth day of November, A. D. 1922.

[Seal of the United States Circuit Court of Appeals, Eighth Circuit.]

E. E. KOCH,
*Clerk U. S. Circuit Court of
Appeals for the Eighth Circuit.*

128 [Endorsed:] File No. 29,124. Supreme Court U. S., October Term, 1922. Term No. 574. Lion Bonding & Surety Co., Petitioner, vs. A. H. Karatz. Writ of certiorari and return. Filed Nov. 21, 1922.